

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 January 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 a request to HM Treasury (HMT) seeking emails, memos and briefings sent to, or prepared for, the Chancellor of the Exchequer between January 3 and January 5 2020 which discuss the Shanghai-London Stock Connect scheme. HMT withheld the information on the basis of section 27(1)(a) (international relations) of FOIA. It subsequently argued that the information was also exempt from disclosure on the basis of sections 27(1)(c) and (d) (international relations), 35(1)(a) (government policy) and 43(2) (commercial interests).
2. The Commissioner's decision is that the withheld information is exempt from disclosure on the basis of sections 27(1)(a), (c) and (d) of FOIA and that in all the circumstances of the case the public interest favours maintaining these exemptions.
3. No steps are required.

## Request and response

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4. The complainant submitted a request to HMT on 21 January 2020 seeking the following information:

*'All emails, memos and briefings sent to or prepared for the Chancellor between January 3 and January 5 [2020] which discuss the Shanghai-London Stock Connect scheme'.<sup>1</sup>*

5. HMT responded on 6 February 2020 and confirmed that it held information falling within the scope of the request but it considered this to be exempt from disclosure on the basis of section 27(1)(a) (international relations) of FOIA.
6. The complainant contacted HMT on 7 February 2020 and asked for an internal review of this refusal.
7. HMT informed him of the outcome of the internal review on 28 February 2020. This upheld the application of section 27(1)(a).

## Scope of the case

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8. The complainant contacted the Commissioner on 2 March 2020 in order to complain about HMT's decision to withhold the requested information. He argued that the public interest favoured disclosure of the withheld information and also questioned why HMT could not disclose a redacted version of the information.
9. During the course of the Commissioner's investigation HMT explained that it also considered the withheld information to be exempt from disclosure on the basis of the following exemptions within FOIA: sections 27(1)(c), 27(1)(d) (international relations), 43(2) (commercial interests) and 35(1)(a) (government policy). It also considered section 40(2) (personal data) of FOIA to apply to the names of junior officials in the withheld information.

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<sup>1</sup> The London-Shanghai Stock Connect is an agreement to link the London Stock Exchange and the Shanghai Stock Exchange and as a result the financial markets in each jurisdiction. It provides a formal mechanism for Chinese and UK based firms to access each other's equity markets across two major financial centres.

## Reasons for decision

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### Section 27(1) – international relations

10. Sections 27(1)(a), (c) and (d) of FOIA state that:

*'(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice—*

- (a) relations between the United Kingdom and any other State...*
- (c) the interests of the United Kingdom abroad, or*
- (d) the promotion or protection by the United Kingdom of its interests abroad.'*

#### HMT's position

11. In its responses to the complainant HMT explained that if the requested information was disclosed this would be likely to prejudice the UK's relations with other states, the UK's interests abroad as well as the UK's ability to promote and protect these interests. HMT noted that the information in scope concerned Stock Connect, an UK interest abroad that forms part of the UK's broader financial and economic interests. HMT also argued that disclosure of the requested information would reveal details of private communications that have the potential to undermine the UK's international relations with implications for its interests abroad.
12. HMT's submissions to the Commissioner provided further detailed arguments to support its position that such prejudice would be likely to occur. However, HMT's further submissions refer directly to the content of the withheld information and in light of this the Commissioner cannot include these submissions in this decision notice.

#### The Commissioner's position

13. In order for a prejudice based exemption, such as section 27(1), to be engaged the Commissioner considers that three criteria must be met:
- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is

designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and

- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
14. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested that, in the context of section 27(1), prejudice can be real and of substance *'if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary'*.<sup>2</sup>
  15. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by HMT clearly relates to the interests which the exemptions contained at sections 27(1)(a), (c) and (d) are designed to protect. With regard to the second criterion having considered the content of the withheld information and taking into account HMT's submissions, the Commissioner is satisfied that there is a causal link between disclosure of this information and prejudice potentially occurring to the UK's relations with other international states. She also accepts that in turn this could harm the UK's ability to protect its interests abroad. Furthermore, she is satisfied that the resultant prejudice would be real and of substance. Moreover, the Commissioner is satisfied that there is a more than a hypothetical risk of prejudice occurring and therefore the third criterion is met.
  16. Sections 27(1)(a), (c) and (d) are therefore engaged. In reaching this conclusion the Commissioner has considered whether there is scope for disclosing a redacted version of the information in the scope of the request. However, having carefully considered the content of the information the Commissioner accepts that the exemptions provide a basis to withhold *all* of the information in the scope and therefore it is not possible to disclose a redacted version of the information..

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<sup>2</sup> [Campaign against Arms Trade v the Information Commissioner and Ministry of Defence EA/2007/0040 \(26 August 2008\)](#)

## **Public interest test**

17. Section 27(1) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### *Public interest in disclosing the withheld information*

18. The complainant argued that the Shanghai-London Stock Connect scheme is a matter of significant interest to businesses in both countries and for the wider public in terms of its implications for relations for both countries. Therefore, for the purpose of market and political transparency he argued that some, if not all, information related to this scheme should be available for public scrutiny.
19. HMT acknowledged that there was a broad public interest in furthering public understanding of the issues dealt with by public authorities, particularly in relation to significant projects such as the Stock Connect. It accepted that it was in the public interest for the work of government departments to be transparent and open to scrutiny, including the UK's interest with other countries. HMT also acknowledged that there is a broad public interest in furthering public understanding of the issues public authorities deal with and a clear public interest in the work of government departments being transparent and open to scrutiny to increase diligence. HMT accepted that release of the withheld information would advance this interest.
20. However, HMT argued that the public interest in accountability and transparency is already met, to some extent, by materials in the public domain. It noted that information provided by the UK government around the launch of Stock Connect is available on [www.gov.uk](http://www.gov.uk). HMT also noted that as an initiative run by the private sector, the relevant details on the operation of the Stock Connect scheme can be found on the website of the London Stock Exchange Group.

### *Public interest in maintaining the exemption*

21. Furthermore, HMT argued that in its view the public interest in maintaining exemptions outweighed the public interest in disclosure. It argued that there was a significant public interest in ensuring that the UK's relations with other states was not undermined so that in turn the UK's ability to protect and promote its interests was not harmed. HMT argued that disclosing the information would diminish the UK's ability to constructively engage with other states and commercial entities about UK interests. It argued that damaging these channels of communication,

on which cooperation depends, would have implications for the success and viability of the UK's international relations, which in turn would have a negative impact on the economic benefits accrued from the business activity that it generated. HMT argued that such an outcome would be clearly against the public interest. As with its submissions to engage the exemptions, HMT also provided the Commissioner with detailed arguments to support its view that the public interest favoured withholding the information. However, as such submissions also refer to the content of the withheld information the Commissioner has not included these in this decision notice.

*Balance of the public interest arguments*

22. In the Commissioner's view there is a clear public interest in understanding how the UK conducts its relations with other states. In the context of this case she agrees with the complainant that the Stock Connect scheme is one that is of interest not only to businesses in both countries but also to the wider public in the context of UK-Chinese relations. Furthermore, she agrees with HMT that disclosure of the withheld information could also provide an insight into how public authorities take particular decisions.
23. However, the Commissioner accepts that there is very strong public interest in ensuring that the UK's relationship with other states is not harmed in order to ensure the UK can protect and promote its interests abroad. The Commissioner has also carefully considered the detailed public interest arguments submitted to her by HMT and she considers these to be persuasive and compelling. In light of this the Commissioner has concluded that the public interest favours maintaining the exemptions contained at section 27(1)(a), (c) and (d) of FOIA.

## Right of appeal

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24. 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)

25. 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.
26. 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**  
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