

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 21 November 2022

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

Decision (including any steps ordered)

1. The complainant has requested information regarding Local Partnerships and whether a specific exemption applied to them. His Majesty's Treasury (HMT) answered part of the request and cited section 42(1) of FOIA to withhold the remaining parts requested.
2. The Commissioner's decision is that HMT has correctly applied section 42(1) of FOIA and does not require the public authority to take any steps.

Request and response

3. On 21 April 2022, the complainant wrote to the public authority and requested information in the following terms:

"1. I would be grateful if you could confirm whether HM Treasury were aware of the advice from the NAO prior to sending the letter to Local Partnerships on the 10 August 2015, in particular the summary of legal advice provided on the 25 February 2015 which concluded that Regulation 12 exemption did not apply to Local Partnerships?

2. Further, assuming HM Treasury took its own legal advice prior to issuing the letter to Local Partnerships, I would be grateful if you could furnish me with a copy of all documents and advice received (legal or otherwise) regarding the application of the Regulation 12

exemption to Local Partnerships, including the instructions used to obtain such advice?"

4. HMT responded on 20 May 2022 stating:

"As noted by the Infrastructure and Projects Authority's (IPA's) response to your request on 26 April 2022, HM Treasury sent a letter to the National Audit Office (NAO) on 5 August 2015 fully addressing the issues raised by the NAO in February 2015.

With regards to your request on legal advice received by HM Treasury, all information in scope is being withheld under section 42(1) of the FOI Act. Section 42 exempts information from being released if a claim to legal professional privilege (LPP) could be maintained in legal proceedings."

5. HMT upheld its original position at internal review.

Reasons for decision

6. The following analysis sets out why the Commissioner has concluded that HMT was entitled to rely on section 42 of FOIA in this particular case.
7. Section 42(1) of the FOIA provides that information is exempt from disclosure if the information is protected by legal professional privilege and this claim to privilege could be maintained in legal proceedings. Legal professional privilege protects the confidential communications between a lawyer and client for the purpose of seeking or giving legal advice.
8. In this case, the complainant has requested the correspondence including legal advice "regarding the application of the Regulation 12 exemption to Local Partnerships". The Commissioner is satisfied from the wording of the request that the information falling within the scope of this request would constitute confidential legal advice provided by a qualified legal adviser to their client. This means that this information is subject to legal professional privilege, and the Commissioner is aware of no evidence suggesting that this privilege has been waived. Whilst the complainant believes that his information request is merely an administrative matter, the Commissioner considers it meets the criteria.
9. The Commissioner therefore considers that section 42(1) of the FOIA is engaged in relation to this information. The Commissioner will now go on to consider the public interest test.

10. The general public interest inherent in this exemption will always be strong due to the importance of the principle behind LPP: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice, which in turn is fundamental to the administration of justice.
11. In *Bellamy v Information Commissioner & the Secretary of State for Trade and Industry* (EA/2005/0023, 4 April 2006), the Tribunal explained the balance of factors to consider when assessing public interest test: "there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt public interest."
12. The Commissioner considers that the balance of public interest lies in withholding the information and protecting HMT's ability to obtain free, frank, and high-quality legal advice without the fear of disclosure. The Commissioner is not aware of any public interest arguments that are enough to outweigh or override the inbuilt public interest in the information remaining protected by legal professional privilege.
13. The Commissioner has concluded that the public interest in maintaining the exemption at section 42(1) outweighs the public interest in disclosure. Therefore, HMT has correctly applied section 42(1). The Commissioner requires no further action to be taken by HMT in relation to this request.

Right of appeal

14. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

15. 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.
16. 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

Phillip Angell
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SK9 5AF