

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 March 2023

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

Decision (including any steps ordered)

1. The complainant has requested information relating to the relocation of Shell's tax residence to the UK.
2. The Commissioner's decision is that the withheld information engages section 43(2) (commercial interests) and the public interest lies in maintaining the exemption. However, in failing to respond to the request, or provide a refusal notice, within twenty working days upon receipt of the request, the Treasury breached section 10 (time limits for compliance) and section 17 (refusal of request) of FOIA.
3. The Commissioner does not require further steps.

Background information

4. The Treasury has provided the Commissioner with the following background information relevant to this case:

“On 15 November 2022 Shell announced it was ending its dual share structure and moving its headquarters to the UK¹.

Prior to the restructuring Shell was incorporated in the UK but had Dutch tax residence. Following the restructuring Shell has moved to having a single line of shares and has aligned Shell’s tax residence with its country of incorporation in the UK, with Board and Executive Committee meetings held in the UK, and Shell’s chief executive and chief financial officer located in the UK.

Shell presented the measure as a simplification aiming to:

- Make it easier to distribute profits to shareholders;
- Strengthen Shell’s ability to respond to the challenges posed by the energy transition (Net Zero) through making them more agile; and
- Align Shell’s structure more closely with their global competitors.”

Request and response

5. On 16 November 2021, the complainant, who is concerned that the UK government is granting Shell preferential treatment, wrote to HM Treasury (‘the Treasury’) and requested:

“Under the Freedom of Information Act 2000, I request that you disclose the following information:

1) Details and copies of formal correspondence with the company Shell which discuss or set out arrangements for the relocation of Shell's tax domicile to the UK and any terms offered to or agreed to by Shell with HM Treasury as part of that relocation.

2) Details of meetings taking place within the last year with staff from Shell where the relocation of the company's international headquarters and/or tax domicile to the UK was discussed. This should include meeting agendas, readouts or similar documents.”

¹ [Simplified Share Structure | Shell Global](#)

6. The Treasury responded on 2 March 2022. It confirmed the dates that senior civil servants met with Shell and explained the purpose behind these meetings. It confirmed that it was withholding specific information under section 43(2) (commercial interests) and section 29 (the economy).
7. The complainant requested an internal review. The Treasury provided its outcome, in which it upheld its previous position and introduced a reliance on section 28(2) (relations within the UK), on 24 May 2022.
8. During this investigation the Treasury confirmed that it was also relying upon section 27 (international relations) and section 36(2)(c) (prejudice to the effective conduct of public affairs).
9. The Treasury has withheld the entirety of the withheld information under section 43(2), so the Commissioner will consider this first. Depending on his findings, the Commissioner may then go onto consider the other exemptions cited.

Reasons for decision

10. The Commissioner has first considered whether the requested information would fall to be dealt with under the EIR which relates to environmental information. In this instance, the withheld information is notes on discussions and meetings which focus on commercial issues and activities surrounding Shell's restructure, rather than details of the environment or energy policy. Therefore, the Commissioner is satisfied that the withheld information is not environmental and has been dealt with correctly under FOIA.
11. Section 43(2) of FOIA states:

'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).'
12. A commercial interest relates to a legal person's ability to participate competitively in a commercial market, with the underlying aim of making a profit.
13. The prejudice that the exemption is designed to mitigate can either relate to the public authority itself or a third party. In this instance the Treasury has cited section 43(2) on the basis that disclosure would prejudice the commercial interests of Shell, the legal person.
14. The withheld information is correspondence between Shell and the Treasury and also internal Treasury correspondence, about Shell. The

withheld information contains candid assessments of the risks of Shell's restructure.

15. The Treasury is concerned that this correspondence 'was not intended for release.' This is irrelevant – all official recorded information is captured by FOIA. However, the Treasury has provided evidence of correspondence from Shell, about this FOI request, in which it expressed concerns regarding disclosure.
16. The Commissioner is aware that Shell's restructure was a highly sensitive commercial decision. The Treasury is concerned that disclosure of the correspondence 'could reopen public challenge' (from shareholders, the media or the Government of the Netherlands) and 'as a publicly listed company this could have implications for Shell's share price or its relationship with its investors...commercial parties and counterparties.'
17. The Treasury has explained that, even after the restructure, Shell will continue to have a significant presence in the Netherlands and the announcement of the restructure was politically sensitive in the Netherlands. For reasons that the Commissioner can't duplicate in this notice, because doing so would disclose the substance of the information being withheld, the Treasury is concerned that disclosure would prejudice the UK's, and Shell's, relationship with the Netherlands.
18. The Treasury is concerned that 'As a major energy company strong relations with jurisdictions in which Shell operate are important and help support jurisdictions understanding of Shell's operations and the design of regulatory and tax regimes which reflect the commercial realities of Shell and other energy companies. They also support Shell's compliance with these regimes. Therefore, if Shell's relationship with the Dutch Government were to be damaged it could commercially damage Shell.'
19. The Treasury has confirmed it's relying on the higher threshold of prejudice, disclosure 'would' prejudice Shell's commercial interests. In this capacity 'would' means 'more probable than not'; in other words, there is a more than 50% chance of disclosure causing the prejudice, even if prejudice would occur on only one occasion or affect one person or situation.
20. The Treasury hasn't offered any explanation as to why the prejudice is more probable than not. Therefore, the Commissioner has considered the circumstances surrounding Shell's restructure at the time that the request was made (16 November 2021) and the twenty working days

afterwards. At the time, the restructure had been announced but shareholders had not yet voted on the proposal.²

21. The Commissioner is mindful that the restructure was very much 'live' at the time that the request was made; he also accepts that disclosure would likely invite a significant amount of media attention. Taking into account the sensitivity and the interest in Shell's restructure, the Commissioner is satisfied that the higher threshold of prejudice is met.
22. As section 43(2) is a qualified exemption, the Commissioner will now go on to consider whether the public interest lies in disclosure or in maintaining the exemption.

Public interest test

Factors in favour of disclosure

23. The Treasury has identified the public interest in transparency and accountability. The Treasury acknowledges that disclosure would aid public debate.
24. The Treasury also acknowledges that there is a specific public interest in this information, 'Particularly given the public interest in the transition to Net-Zero and the important role which energy companies play in that transition.'
25. There are specific public interest considerations that the complainant has identified, and the Treasury has not. These largely revolve around Shell's tax arrangements, both current and any incentives that might be driving the restructure.
26. The Commissioner acknowledges that the complainant accused the UK government of negotiating a preferential tax deal with Shell in order to encourage them to relocate to the UK. As part of its internal review outcome, the Treasury assured the complainant that 'the Treasury does not negotiate preferential treatment with individual taxpayers.'
However, given the criticism of the previous tax arrangements of Shell,³ the Commissioner acknowledges that this reassurance may be insufficient.
27. The Commissioner also acknowledges that there is a public interest in the UK government's relationship with Shell. The UK government has

² [Shell shareholders overwhelmingly back moving headquarters to UK | The Independent](#)

³ [Shell and BP paid zero tax on North Sea gas and oil for three years | Oil and gas companies | The Guardian](#)

pledged to decarbonise the economy by 2025 and identifies Shell as a key part of its plans to do so. However, Shell has been accused of greenwashing its harmful activities⁴ and has been ordered by a Dutch court⁵ to align its policies with the Paris agreement, an international treaty designed to tackle climate change. Shell intend to appeal the decision.

Factors in favour of maintaining the exemption

28. The Treasury has identified 'There is a material public interest in preventing Shell's economic interests from being prejudiced. Shell's interest and the public interest align in a number of ways:

- Shell is a major investor and employer in the UK whose activities make a material contribution to the UK's economy.
- As a major energy company Shell has an important role to play in the transition to net zero, a key government objective.
- The availability and security of energy supply is fundamental to UK prosperity and Shell is a key player in the UK energy sector.
- Shell's activities generate significant tax revenue in the UK which help fund vital public services.
- UK pension funds and other institutional investors hold investments in Shell in order to match their liabilities."

The balance of the public interest

29. In the Commissioner's opinion, the Treasury has underestimated the public interest in this information. Furthermore – it cannot just always refuse to disclose all information relating to Shell for the reasons above. Whilst it has identified 'There is particular interest in our relationship with Shell given the importance of their role in the energy transition,' it has failed to acknowledge that there might be concerns surrounding the relationship between the UK government and Shell.

30. The Treasury has concluded 'The public interest in preventing Shell's commercial interests from being harmed, with potential knock-on effect for employment, investment and tax revenues in the UK, as well as for the Government's ability to achieve key objectives such as net zero, is very strong and overrides the public interest in promoting accountability

⁴ [The Greenwashing Files - Shell | ClientEarth](#)

⁵ [Shell: Netherlands court orders oil giant to cut emissions - BBC News](#)

and transparency (which is in any case to some extent already satisfied by material we have released and material in the public domain).'

31. During its handling of this request the Treasury directed the complainant to transparency data⁶ but this doesn't give any more information than that outlined in paragraph 8. The Commissioner isn't convinced that confirming senior civil servants met with Shell to discuss the restructure, and on what dates, meets the specific public interest that the complainant has identified.
32. In their internal review request, the complainant stated, 'Even if the requested information does not directly pertain to the issues highlighted above, it provides an essential part of the wider context.' Even though the Treasury has refuted the allegation that it is offering Shell preferential terms or tax arrangements, there's still a public interest in releasing information that will create a full picture.
33. However, the Commissioner has accepted that prejudice would occur, and on the higher threshold of prejudice. Whilst he accepts the complainant, and others, have their doubts, the Treasury maintain that Shell has a vital part to play in the UK government's net zero plan. It would not be in the public interest to prejudice the commercial interests of Shell, at a cost to progress towards net zero.
34. If the withheld information revealed inappropriate relationships between the Treasury and Shell, then there would be strong grounds for disclosure. However, this isn't the case. The withheld information concerns two parties managing a complicated, international restructure and all that move entails.
35. In reaching his decision, the Commissioner has considered the extent to which the requested information would meet the public interest identified by the complainant. The Commissioner has reviewed the withheld information and considered the content of it; it touches upon some of the issues the complainant has identified and would shed light on how the Treasury is managing the restructure.
36. Whilst he acknowledges that it is an extremely finely balanced decision, the Commissioner believes that disclosure would cause a disproportionate prejudice to Shell, which is operating in a complex, international market and to do so is not in the public interest, since the

⁶ [HM Treasury Senior Officials Travel Expenses, Hospitality and the Permanent Secretaries Meetings with External Organisations: July to September 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/100000/HM_Treasury_Senior_Officials_Travel_Expenses_Hospitality_and_the_Permanent_Secretaries_Meetings_with_External_Organisations_July_to_September_2021.pdf); [HM Treasury Senior Officials Travel Expenses, Hospitality and the Permanent Secretaries Meetings with External Organisations: October to December 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/100000/HM_Treasury_Senior_Officials_Travel_Expenses_Hospitality_and_the_Permanent_Secretaries_Meetings_with_External_Organisations_October_to_December_2021.pdf)

withheld information itself would not sufficiently contribute to the public debate the complainant has identified.

37. The Commissioner accepts that private companies, and the UK government, fulfilling their publicly stated objectives regarding climate change and net zero ambitions is clearly in the public interest. However, the Commissioner is not persuaded that disclosure would place any new information about this matter into the public domain and, therefore, he has decided the public interest lies in maintaining the exemption.
38. Since the Commissioner has decided that the Treasury was correct to withhold the requested information under section 43(2), he has not gone onto consider the Treasury's application of the other exemptions.

Procedural matters

39. In failing to respond to the request, or provide a refusal notice, within twenty working days upon receipt of the request, the Treasury breached section 10 (time limits for compliance) and section 17 (refusal of request) of FOIA.

Right of appeal

40. 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

41. 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.
42. 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

Alice Gradwell
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