

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

Date: 21 July 2023

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

Decision (including any steps ordered)

1. The complainant has requested information about a proposed NFT¹ scheme being considered by the United Kingdom Government.
2. The Commissioner's decision is that the public authority was entitled to rely on section 35 to withhold some of the requested information.
3. The Commissioner has also decided that the public authority should have dealt with part of the request under the EIR. The public authority has breached regulation 14 of the EIR by failing to rely on an EIR exception within 20 working days of the request.

¹ Non-fungible token: a unique digital certificate, registered in a blockchain, that is used to record ownership of an asset such as an artwork or a collectible.

<https://www.collinsdictionary.com/dictionary/english/nft#:~:text=non%2Dfungible%20token%3A%20a%20unique%20digital%20certificate%2C%20registered%20in%20a%20blockchain%2C%20that%20is%20used%20to%20record%20ownership%20of%20an%20asset%20such%20as%20an%20artwork%20or%20a%20collectible>

4. The Commissioner requires the public authority to take the following steps to ensure compliance with the EIR .
 - Confirm or deny whether it holds requested environmental information. If, and to the extent that it does hold such information, it must either disclose that information or issue a refusal notice that complies with regulation 14 of the EIR.
5. The public authority must take the required steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

6. On 6 April 2022, the complainant requested information from HM Treasury by saying as follows:

“I'm writing to you under the Freedom of Information Act (2000) to ask that you please disclose to me whether or not an Environmental Impact report was completed for the NFT scheme you've just produced.

If so, I would like you to provide a copy of it for me.

I'd also like to know the cost of the scheme, projected if that is all that's available, over the course of the next 5 years, or as long as you have worked it out for.

I'd also like to know if it will be limited to payments via crypto currency, or if you will be able to pay via cash or card for one.

How many will be being produced? and where will the funds raised from it be allocated.”
7. On 8 June 2022, HM Treasury responded. It refused to provide the requested information. It cited the following exemption as its basis for doing so:
 - section 35(1)(a) (formulation or development of government policy)
8. The complainant requested an internal review. HM Treasury sent him the outcome of its internal review on 19 August 2022. It upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 21 August 2022 to complain about the way his request for information had been handled.
10. The Commissioner considers he has to determine whether HM Treasury was entitled to withhold the requested information from the complainant.

Reasons for decision

11. The Commissioner first considers the complainant's request for the Environmental Impact report. As it is quite clearly a request for environmental information it should have been dealt with by HM Treasury under the EIR.
12. This it did not do; the Commissioner therefore considers that HM Treasury breached regulation 14 of the EIR by not providing any requested environmental information that it held or cited in writing a valid EIR exception within 20 working days of receiving the request.
13. The Commissioner next considers the requested information that was not a request for environmental information. That being the request for information concerning (in paraphrase) the cost of the scheme, payment type and the allocation of raised funds.

Section 35(1)(a)

14. Section 35(1)(a) provides that information held by a government department is exempt from disclosure if it relates to the formulation or development of government policy. The Commissioner understands these terms to refer to the design of new policy, and to the process of reviewing or improving existing policy. The exemption is subject to the public interest test.
15. The purpose of section 35(1)(a) is to protect the integrity of the policymaking process, and to prevent disclosures which would undermine this process and result in less robust, well-considered or effective policies. In particular, it ensures a 'safe space' to consider policy options in private.
16. The exemption is class based and so it is only necessary for the withheld information to 'relate to' the formulation or development of government policy for the exemption to be engaged. The Commissioner considers that the term 'relate to' can be interpreted broadly. Any significant link between the information and the process by which government either

formulates or develops its policy will be sufficient to engage the exemption.

17. The Commissioner takes the view that the formulation of policy comprises the initial stages of the policymaking process – where options are generated and sorted, risks are identified, consultation occurs, and recommendations/submissions are put to a Minister or decision makers.
18. Development may go beyond this stage, to the processes involved in improving or altering existing policy, such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.
19. Whether information relates to the formulation or development of government policy is a judgement that needs to be made on a case by case basis, focussing on the content of the information in question and its context.
20. The Commissioner considers that the following factors will be key indicators of the formulation or development of government policy:
 - The final decision will be made either by the Cabinet or the relevant Minister;
 - The Government intends to achieve a particular outcome or change in the real world; and
 - The consequences of the decision will be wide-ranging.

HM Treasury's Submissions

21. In April 2022, it was announced that the government would work with the Royal Mint to create an NFT which would be traded online. This was announced by the then Deputy to Rishi Sunak (in his capacity as Chancellor of the Exchequer) and Economic Secretary to the Treasury, John Glenn, at a financial technology conference. On 4 April 2022, this was announced by the Treasury on social media pages, and the scheme was reported widely in the media.
22. On 27 March 2023, the now Economic Secretary to the Treasury, Andrew Griffith, responded to a Parliamentary written question from Harriet Baldwin MP, stating that "In consultation with HM Treasury, the Royal Mint is not proceeding with the launch of a Non-Fungible Token at this time but will keep this proposal under review". This is not exhaustive of discussion on this matter, and other questions may have been answered on this topic by ministers.
23. The government and the Treasury's approach to new emerging technologies is sensitive and continuously revisited in policy making. Therefore, the publication of the information requested (the cost of the

scheme over the next five years, whether payments were limited to crypto currency, and the quantity of NFTs being produced) would be detrimental to current policymaking in this area.

24. It continues to rely on section 35(1)(a) to withhold the in-scope information. The policy concerned the Treasury working with the Royal Mint on an NFT, and although it has now been announced that this particular scheme is not going ahead at this time, it considers that the fact the Treasury is continuing to have such conversations means that the exemption is still engaged. As such, disclosure of such information would in turn result in less effective future policies by undermining the process and integrity of policymaking.

Commissioner's Reasonings

25. Having regard to the above, and having viewed the withheld information, the Commissioner is satisfied that the exemption is engaged. The withheld information being information generated by or concerning the policy considerations of a proposed NFT scheme.
26. The Commissioner, finding the exemption engaged, has therefore gone on to consider the public interest and 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 Test

HM Treasury's Submissions

27. It recognises that there is an inherent public interest in transparency and accountability of public authorities, which may be promoted by the release of the in-scope information. There is a clear public interest in transparency as regards the arrangements made by the government to issue NFTs. There is also a clear public interest in accountability of public authorities with respect to the use of public funds. To this end, there is already information in the public domain regarding the government's approach to NFTs, cryptocurrency and other emerging technologies, including a consultation response published by the government in January 2022 and a statement on the government's approach to crypto asset financial promotions regulation policy in March 2023.
28. Balanced against this is the public interest in protecting the government's ability to discuss and develop policies and to reach well-formed conclusions. The material it holds relates to the Treasury's decision to issue an NFT, alongside Royal Mint, as an emblem of the UK's forward-looking approach to crypto assets. At the time the request was received (6 April 2022), the UK had just announced that it would be partnering with Royal Mint to produce the aforementioned NFTs.

29. At the time of the Treasury's response in May 2022, and throughout the subsequent correspondence between the Treasury and the complainant, that decision to issue those NFTs remained live as the NFTs had not been issued into circulation. As above, although it was announced that the NFT scheme with Royal Mint was not being taken forward on 27 March 2023, the Treasury is keeping this policy proposal under review. At this juncture, as the government and the Treasury continue to focus on maintaining the UK as a global hub for crypto assets, it is its strong view that it is important to continue to have free and frank discussions about the future of NFTs, and that discussion remains live and ongoing.
30. Release of the withheld information is likely to continue to inhibit those discussions and in turn have had a prejudicial effect on the outcome of the decision-making process, in relation to this policy and to future discussions that would take place. This would not be in the public interest.
31. The Commissioner has had regard to his published guidance on section 35 which points out that as a class-based exemption section it carries no inherent weight in favour of maintaining the exemption. The relevance and weight of the public interest arguments will depend entirely on the content and sensitivity of the information in question and the effect its release would have in all the circumstances of the case.
32. The Commissioner, in carrying out his assessment of the public interest test, considers the circumstances that existed at the time when the refusal notice was issued as required by the statutory time for compliance. That is, 8 June 2022.
33. At that time of the refusal notice the policy determinations, whether to issue NFT's, were very much a live and dynamic issue. Accordingly for the reasons prevailing at the time of the refusal notice (as submitted by the HM Treasury and endorsed by the Commissioner), it was not in the public interest to release the withheld information. In this particular instance, the public interest clearly favoured maintaining the exemption and therefore HM Treasury was not required to disclose the withheld information to the complainant.

Right of appeal

34. 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

35. 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.
36. 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
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