

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 September 2023

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

Decision (including any steps ordered)

1. The complainant has requested information from HM Treasury (HMT) regarding the minutes and other recorded information of Loan Charge Review meetings held on two specific dates.
2. The Commissioner's decision is:
 - HMT was entitled to rely on sections 31(1)(a), 31(1)(d), 35(1)(a) and 42(1).
 - HMT was not entitled to rely on either section 40(5B) or section 41(2) to refuse to confirm or deny whether further information was held.
 - HMT failed to identify all relevant information within the scope of the request or issue a refusal notice within 20 working days and therefore breached sections 10 and 17 of FOIA respectively.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Confirm or deny whether it holds information relating to the four meetings it identified in its correspondence to the complainant dated 11 August 2023;
 - If information is held, either provide that information or issue a refusal notice in accordance with section 17 of FOIA.

4. The public authority must take these 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 31 May 2022, the complainant wrote to HMT and requested information in the following terms:

“Please disclose the minutes, and any other recorded information, of all Loan Charge Review meetings which were held on the dates below -

18th September 2019
2nd October 2019”
6. HMT requested clarification from the complainant on 14 June 2022 regarding the terms ‘Loan Charge meetings’ and ‘any other recording information”
7. The complainant clarified their request on the 29 June 2022 in the following terms:

“The Loan Charge Review was commissioned by the Chancellor of the Exchequer, who has overall responsibility for the work of Her Majesty's Treasury.

Whether these were meetings held by Her Majesty's Treasury on the subject of the Loan Charge Review, or whether they were meetings held by one or more members of the Loan Charge Review team on either of those two dates is incidental. I have asked you to provide the minutes, and any other recorded information you hold, which relates to any of those meetings on the two dates mentioned. That recorded information will include printed documents, computer files, letters, emails, photographs, and sound or video recordings.”
8. HMT provided an interim response on 27 July 2022. It stated that it was intending to rely on section 31, but advised it needed additional time to consider the public interest.
9. After some additional correspondence regarding the complainant’s identity, HMT responded on the 6 December 2022. It explained that it was now seeking to rely on section 14(1) to refuse the request.

10. Following an internal review HMT wrote to the complainant on 12 June 2023. It provided some information within the scope of the request, but advised the remaining information was withheld under section 21(1), section 31(1)(a), section 31(1)(d), section 35(1)(a), section 40(2) and section 42.

Scope of the case

11. The complainant contacted the Commissioner on 12 April 2023 to complain about the way their request for information had been handled.
12. During the Commissioner's investigation the complainant queried the number of meetings HMT had confirmed were held on the dates specified in the request. they argued that more meetings had taken place. HMT subsequently confirmed that three further meetings had taken place, but it refused to confirm or deny holding information about the content of these meetings, under sections 41(2) and 40(5B).
13. The complainant contacted the Commissioner to advise they were satisfied with the application of section 21(1) and 40(2), but wanted him to investigate the remaining exemptions applied.
14. The Commissioner considers that the scope of his investigation is to consider whether HMT was entitled to rely on the exemptions it has applied.

Reasons for decision

Section 31 – law enforcement

15. Section 31 of FOIA provides an exemption from the duty to disclose information if to do so would, or would be likely to, prejudice one or more of a range of law enforcement activities. Section 31 can be claimed by any public authority, not just those with law enforcement functions.

Section 31(1)(a) – the prevention or detection of crime

16. Section 31(1)(a) of the FOIA says that: "Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice- (a) the prevention or detection of crime,"
17. The exemption in section 31(1)(a) covers all aspects of the prevention and detection of crime. It could apply to information on general policies and methods adopted by law enforcement agencies.

18. The exemption also covers information held by public authorities without any specific law enforcement responsibilities. It could be used by a public authority to withhold copies of information it had provided to a law enforcement agency as part of an investigation. It could also be used to withhold information that would make anyone, including the public authority itself, more vulnerable to crime for example, by disclosing its own security procedures, such as alarm codes.
19. In the circumstances of this case, the withheld information consists of virtual meeting links which were generated to facilitate meetings between HMT and HM Revenue Customs (HMRC). It also had a link to HMT's information storage system, SharePoint.
20. HMT advised that releasing this information would prejudice the public authorities' (HMT or HMRC) IT security and leave the department vulnerable to crime, particularly cyber and security attacks. HMT concluded that malicious individuals could potentially exploit the withheld information to compromise the confidentiality and integrity of government data, which could constitute a criminal offence.
21. The complainant challenged the application of 31(1)(a) querying what evidence was held by HMT which would justify the claim that, disclosure of the requested information would prejudice the prevention or detection of crime.
22. Having reviewed the withheld information, the Commissioner agrees that the release of the information into the public domain would prejudice the prevention or detection of crime. The Commissioner considers that the disclosure of such information would provide details that would be useful to those with criminal intent and put individuals at risk of becoming victims of crime.
23. Having considered the circumstances in this case, the Commissioner is satisfied that section 31(1)(a) is engaged, and will now go on to consider the public interest arguments.

Public interest test

24. Sections 31(1)(a) is a qualified exemption and is subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has considered whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.
25. The Commissioner acknowledges that disclosure would demonstrate that HMT is acting in an open and transparent manner when dealing with FOIA requests.

26. HMT advised it could not see a public interest in the release of the withheld information, as it does not appear to be of public interest to release virtual meeting links. These links do not provide any information regarding Loan Charge policy and is purely administrative information.
27. HMT explained that withholding the information is critical to ensure that government IT is not compromised, diminished or subject to undue influence. It informed the Commissioner there is a strong public interest in maintaining confidence in the ability of government to function as needed, including collaboration across departments, whilst ensuring that an appropriate level of protection is maintained. It is critical for the operation and collaboration between HMT and HMRC to be maintained.
28. The Commissioner is satisfied that there is a greater, wider public interest in HMT being able to collaborate with other departments without any compromised IT services. There is also a greater public interest in information being stored securely without the risk of crimes occurring. He also accepts that the public interest in disclosure is negligible because the links reveal nothing about the policy itself.
29. The Commissioner concludes that section 31(1)(a) of FOIA is engaged and the public interest favours maintaining this exemption.

Section 31(1)(d) – Prejudice to the assessment or collection of tax or any imposition of a similar nature.

30. Section 31(1)(d) states:

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to prejudice-

(d) the assessment or collection of any tax or duty or of any imposition of a similar nature.”

31. The Commissioner’s guidance on section 31(1)(d) of the FOIA¹ states that the phrase “tax, duty or...imposition of a similar nature” is a very broad term. This exemption may protect information if its disclosure would or would be likely to prejudice the collection of tax from a particular person or be of use to those evading tax. It may also apply if disclosing the information would or would be likely to promote tax avoidance.

¹ [law-enforcement-foi-section-31.pdf \(ico.org.uk\)](https://ico.org.uk/law-enforcement-foi-section-31.pdf)

32. HMT explained that the withheld information to which this exemption applies relates to the characteristics of avoidance arrangements and options for those with limited means to re-pay the tax that they owe. It further advised the withheld information related to disguised remuneration schemes and mechanisms which HMRC is able to use to take a person's financial situation into account when agreeing and settling any outstanding tax liabilities.
33. HMT advised that releasing the withheld information could allow taxpayers to develop avoidance arrangements, or change and manipulate their affairs in order to alter a settlement outcome. It further explained that the withheld information contained potential policies to tackle tax avoidance schemes, and possible limitations associated with these policies.
34. The Commissioner is satisfied that HMT has appropriately demonstrated that disclosing the requested information would be likely to result in prejudice as highlighted in section 31(1)(d) of the FOIA.

Public interest test

35. The exemption at section 31(1)(d) is subject to the public interest test set out in section 2(2)(b) FOIA. Therefore, the Commissioner has also considered whether in all the circumstances of this case, the public interest in maintaining the exemption at section 31(1)(d) outweighs the public interest in disclosing the withheld information.
36. HMT explained that there is a strong public interest in the release of the withheld information, as it would demonstrate departments being accountable for the implementation and enforcement of tax rules and wider operational procedures.
37. HMT stated that in this specific case, releasing this information could improve understanding of HMRC's settlement procedures and allow for greater transparency.
38. HMT also advised that releasing the requested information would demonstrate that the departments are being transparent about how taxpayers can settle their affairs.
39. However, HMT also informed the Commissioner that, if it was to disclose the requested information, it may lead to HMRC being unable to ensure the right amount of tax is paid and therefore lead to the tax burden being shared unfairly.
40. HMT explained that the withheld information includes details which could help taxpayers who have used avoidance schemes to artificially reduce their liabilities and therefore pay less tax than is fair and due. Sharing

this information may undermine HMRC's compliance activities, leading to reduced public confidence in the tax system.

41. HMT explained that withholding the requested information would ensure that those who are promoting tax avoidance schemes will not become apprised of potential options to tackle tax avoidance.
42. The complainant argued that the law around loan charges had not been enforced properly and there had been a consistent failure to pursue those "legally responsible" for the alleged liability. The complainant further added that loan charge policies "criminalise" those who are being "unjustly and unfairly targeted" by the tax authority. The complainant concluded that public confidence had already been lost due to actions already taken by HMT and HMRC regarding loan charges. To withhold the requested information would only prevent the public from formulating a reasoned and well-informed decision.
43. The Commissioner has considered the arguments presented by HMT and the complainant. He recognises the general public interest in promoting transparency, accountability and understanding of HMT's compliance activities. However, he considers that the greater public interest lies in preventing individuals (particularly those who have already avoided paying taxes, or who encourage or assist others to) from having access to information that would allow them to avoid further tax obligations, thereby maintaining public confidence in the collection of tax.
44. The Commissioner finds that in all circumstances of the case, the public interest in withholding the information outweighs the public interest in disclosure. HMT was not, therefore, obliged to disclose this information.

Section 35(1)(a) – formulation or development of government policy

45. Section 35(1)(a) of FOIA states that: "Information held by a government department or by the Welsh Assembly Government is exempt information if it relates to- (a) the formulation or development of government policy"
46. Section 35 is a class based exemption, therefore if information falls within the description of a particular sub-section of 35(1) then this information will be exempt; there is no need for the public authority to demonstrate prejudice to these purposes.
47. The Commissioner takes the view that the 'formulation' of policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occurs, and recommendations/submissions are put to a minister or decision makers.

48. '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.
49. Ultimately 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 precise context and timing of the information in question.
50. 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.
51. HMT advised that the withheld information relates to the formulation and development of government policies on tackling promotion and use of disguised remuneration tax avoidance schemes.
52. The complainant advised that they no longer felt that section 35(1)(a) applies given the time elapse since the policy was enacted. The Commissioner notes that information can still "relate to" the development or formulation of a policy even after that policy has been announced. The passage of time does not affect whether the exemption is engaged – although it may affect the balance of the public interest.
53. Having reviewed the withheld information, the Commissioner can clearly see that the information relates to future prevention options: a brief summary of the options available and the risks involved with those options. The Commissioner is therefore satisfied that the withheld information relates to the formulation of Government policy and that section 35(1)(a) is engaged. He has therefore gone on to consider the public interest.

Public interest test

54. The complainant referred to the Commissioner's guidance after HMT applied section 35(1)(a), which states the following:

"Once a policy decision has been finalised and the policy process is complete, the sensitivity of information relating to that policy generally starts to wane, and public interest arguments for protecting the policy

process become weaker. If the request is made after the policy process is complete, that process can no longer be harmed.”²

55. The Commissioner acknowledges the approach taken by the First Tier Tribunal in *Department for Education and Skills v Information Commissioner and the Evening Standard (EA/2006/0006)*³ when considering the time lapse between the information being created and when a request has been made.
56. The Commissioner can see that although there has been a time lapse between the withheld information being created and the date of the request, tax avoidance is an ongoing concern for government.⁴ It is logical that, as tax avoidance strategies keep evolving, counter-avoidance strategies need to keep evolving too. As new avoidance schemes are developed, the Government will need to keep formulating new policies and developing existing ones to counter those schemes.
57. The Commissioner also notes that disclosing the requested information would provide individuals partaking in tax avoidance with details of potential new strategies, or details of issues with current strategies.
58. HMT and HMRC need a safe space in which to discuss and evaluate ideas. In particular, both organisations need to ensure they have fully considered the risks or weaknesses of any options they put forward without fear that that assessment of risk or weakness will be put into the public domain – potentially undermining any steps taken to mitigate those risks or weaknesses.
59. If HMT or HMRC officials feel inhibited from discussing risks for fear that those risks will be made available to potential tax avoiders, they may offer less candid views in future and this could lead to poorer policy-making.
60. Whilst the Commissioner expects civil servants to be robust individuals, not easily dissuaded from providing candid advice, he recognises that this is one scenario in which it is plausible that officials may be dissuaded from identifying risks and weaknesses if they fear that information could be placed in the public domain.
61. He has therefore determined that the public interest in withholding the information under section 35(1)(a) outweighs the interest in disclosing

² [Section 35 - Government policy | ICO](#)

³ [Information Tribunal Appeal Number: EA/2006/0010 \(tribunals.gov.uk\)](#)

⁴ [Dealing with promoters of tax avoidance - GOV.UK \(www.gov.uk\)](#)

the requested information. He is satisfied that the public interest in ensuring that HMT and HMRC have a safe space to evaluate existing counter-avoidance strategies and consider new ones, is of more importance to the public.

Section 42: Legal Professional Privilege

62. Section 42(1) states:

“Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information”.

63. Section 42 is a class based exemption, that is, the requested information only has to fall within the class of information described by the exemption for it to be exempt. This means that the information simply has to be capable of attracting legal professional privilege (“LPP”) for it to be exempt. There is no need to consider the harm that would arise by disclosing the information.

64. There are two types of legal professional privilege; advice privilege and litigation privilege. The Commissioner’s view is that for legal professional privilege to apply, the information must have been created or brought together for the dominant purpose of litigation or for the provision of legal advice. With regard to legal advice privilege, the information must have been passed to or emanate from a professional legal adviser for the sole or dominant purpose of seeking or providing legal advice. With regard to litigation privilege, the information must have been created for the dominant purpose of giving or obtaining legal advice, or for lawyers to use in preparing a case for litigation.

65. HMT advised that it considered the withheld information to be exempt under section 42(1) because it relates to privileged advice received from solicitors in HMRC about legal considerations and the impact of several policy options proposed.

66. The complainant advised that the withheld information refers to considerations for potential concessions and nothing else, they therefore did not believe the information could constitute legal advice, but rather a “high level comment” on legal considerations and legislative requirements.

67. Having considered the withheld information, the Commissioner is satisfied that the information does contain legal considerations and also contains advice on legal remedies to potential issues. The information is therefore subject to privilege and the exemption is engaged. He will now go onto consider the public interest test.

Public interest test

68. HMT advised that there would be a public interest in transparency and accountability, including of those in legal profession advising the Government. HMT also acknowledged that as the requested information related to Loan Charges, it recognised that there may be a further interest due to the impact on individuals
69. The complainant referred to the Tribunal decision *Mersey Tunnel Users' Association v Information Commissioner and Merseytravel* EA/2007/0052⁵ where it was decided that due to the amounts of money involved and numbers of people affected, the passage of time, the absence of litigation, and crucially the lack of transparency in the authority's actions and reasons, that the public interest in disclosing the information clearly outweighed the strong public interest in maintaining the exemption.
70. HMT advised that to disclose the requested information, would mean disclosure of legally privileged information, which would likely impact on confidentiality and trust between HMRC and their legal advisors. It further noted that legal professional privilege protects confidential communications between lawyers and clients: it is a fundamental principle of English law.
71. HMT added that there is a strong public interest in withholding the information to ensure frankness and openness between HMT, HMRC and their legal advisors is maintained. This trust and openness are fundamental to the administration of the justice system.
72. The Commissioner notes that the *Mersey Tunnel User's Association* case is more than a decade old. More recent case law, including from higher courts, has emphasised the inherent weight to be afforded to the public interest in favour of protecting the principle of privilege.⁶ The advice remains current and the fact that there may be no immediate prospect of further litigation does not mean that litigation could not arise in future.
73. The Commissioner considers that the balance of public interest lies in withholding the information and protecting HMT's ability to seek and receive high quality professional legal advice without the fear of exposing itself to legal risk. Whilst the Commissioner has considered the

⁵ [Microsoft Word - Mersey Tunnel decision website.doc \(tribunals.gov.uk\)](#)

⁶ See, for example, *Robin Callender Smith v Information Commissioner and Crown Prosecution Service* [2022] UKUT 60 (AAC)

complainant's public interest arguments, he does not consider that they are sufficiently compelling to justify disclosure of such information to the world at large.

74. 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 aspect of the request.

Section 1 – general right of access

75. Section 1(1)(a) of the FOIA states that an individual who asks for information is entitled to be informed whether that information is held. This is known as “the duty to confirm or deny”. However, some of the exemptions within the FOIA allow a public authority to refuse to confirm or deny that particular information is held in certain circumstances.

Section 40 - Personal data

76. Section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny whether the authority holds the information does not arise if it would contravene any of the principles relating to the processing of personal data set out in Article 5 of the GDPR.
77. For HMT to be entitled to rely on section 40(5B)(a)(i) the following two criteria must be met:
- confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data; and
 - providing this confirmation or denial would contravene one of the data protection principles.
78. The Commissioner has a well-established position in cases such as this and a full explanation of the exemption can be found in his previous decision notice IC-93789-Q5K53.⁷

Is the information personal data?

79. Section 3(2) of the Data Protection Act 2018 (DPA) defines personal data as:

⁷ [Decision notice \(ico.org.uk\)](https://ico.org.uk)

“any information relating to an identified or identifiable living individual”.

80. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
81. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
82. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
83. HMT confirmed to the complainant on 11 August 2023 that Sir Amyas Morse, who headed the Loan Charge Review, had held meetings with the Loan Charge Action Group on both the dates specified in the request. Sir Amyas had also held a meeting with the Association of Independent Professionals and the Self-Employed (IPSE) and a further one with a tax adviser who HMT did not identify.
84. HMT advised that to confirm or deny if information was held would also reveal whether HMT “held personal data pertaining to taxpayers”. It did not explain whose personal data it considered would be revealed by merely confirming or denying that it held information. It did not explain how those individuals would be identifiable and it did not explain what personal data would actually be revealed about those individuals, by merely confirming or denying that it held information about four meetings it had already confirmed took place.
85. HMT has refused to confirm or deny holding information about four specific meetings - three of which took place with representative bodies and one that took place with an unidentified tax adviser. The only individual who can be identified as having been present at any of those meetings is Sir Amyas himself – who, having been appointed to lead an important review, could have no reasonable expectation that HMT would not disclose details of any meetings he held in that capacity.
86. Merely confirming or denying that information was held about those meetings does not reveal, in itself, who the other participants were. Therefore it reveals nothing about any identifiable individual that is not already in the public domain.
87. As the Commissioner is not satisfied that section 40(5B) applies, he will now go onto consider section 41(2).

Section 41 – breach of confidence

88. Under section 41(1), a public authority is entitled to withhold information if (a) the information was obtained from another person and (b) disclosure would constitute a breach of confidence.
89. Section 41(2) provides that – “The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.”
90. Section 41(2) provides an exclusion from the duty to confirm or deny whether information is held where the act of confirming or denying the existence of the information would itself result in an actionable breach of confidence.
91. HMT has already confirmed that four particular meetings took place with Sir Amyas. It has also identified the other participant in three of those meetings. Given that the fact of a meeting having taken place is already in the public domain, it is difficult to see the grounds on which IPSE or the Loan Charge Action Group could justifiably claim that HMT breached their confidence merely by confirming or denying that it held **some** information relevant to the meeting (bearing in mind that this could include anything from an agenda or even an electronic invite up to a large dossier of evidence). The tax adviser would be unlikely to have standing to bring an action as they are not identifiable.
92. As the Commissioner has already established that the public authority can confirm or deny that it holds this information without revealing anyone’s personal data it is difficult to see why confirmation or denial would reveal anything any person had provided in confidence. HMT has not explained what detriment would be likely to occur if it revealed that some information were held.
93. Participants may have reasonably assumed that parts of the meeting and any information they shared would be treated in confidence, depending on the subject matter to be discussed. But they should have had no reasonable expectation that HMT would not reveal the fact that such a meeting had taken place, nor that it would confirm or deny whether recorded information relevant to the request was held.
94. Given that the complainant asked for minutes and “any other recorded information,” the Commissioner would find it very strange if HMT held no information whatsoever about those four meetings – especially given the information that it holds about the other meetings covered by the request.

95. The Commissioner is not saying that none of the information HMT held about these meetings (if indeed it did hold any) could have been provided in confidence. HMT has the option to rely on section 41 (or any other exemption) to withhold any information that it does hold (if indeed it does hold any). However, the Commissioner fails to see why simply confirming that information was held would give any person standing to bring a breach of confidence action – let alone succeed in one.
96. As HMT was not entitled to rely on either section 41(2) or section 40(5B) of FOIA to refuse to confirm or deny that this information was held, it must now provide that confirmation or denial and, if information is held, disclose it or withhold it in accordance with FOIA.

Procedural matters

97. Section 10 of FOIA requires a public authority to comply with its duty under section 1(1) of FOIA (to confirm whether information is held and to communicate non-exempt information) promptly and within 20 working days. The Commissioner considers that HMT breached section 10 of FOIA as it failed to identify all the information within the scope of the request and to communicate non-exempt information within 20 working days.
98. Section 17 requires a public authority that wishes to rely on an exemption to provide the requester with a refusal notice within 20 working days of receiving the request. The refusal notice should explain what exemptions are being applied and why.
99. Section 17(3) allows a public authority to delay issuing a refusal notice beyond 20 working days in order to consider the public interest maintaining a qualified exemption. It states that the deadline may be extended “until such a time as is reasonable in the circumstances”. The Commissioner takes the view that the time to consider the public interest should not be extended by more than a further 20 working days – except in exceptional circumstances.
100. HMT has explained to the Commissioner that some of the delay was due to concerns over whether the request was valid. It also noted that it failed to re-open the request when it should have done.
101. The Commissioner is of the view that it was impermissible for HMT to have extended the deadline for issuing its refusal notice.
102. If a public authority is extending the deadline, it should only be because it is still completing its considerations about where the balance of the public interest.

103. HMT's responses have made clear that it had failed to decide whether the request was valid and failed to identify all the relevant information within scope within 20 working days. It was not entitled to extend the deadline for responding because it didn't consider the request to be valid and it was not entitled to extend the deadline to consider whether the request was vexatious. It should have determined both these matters within 20 working days of having received the request.
104. Even if HMT had been entitled to extend the deadline, the almost six month delay in responding would not have been acceptable.
105. The Commissioner therefore considers that HMT breached section 17 of FOIA.

Other matters

106. The Commissioner would like to take this time to remind HMT that timely engagement with him is important in matters such as these. Despite him allowing additional time for the HMT to provide full and final arguments, it repeatedly failed to respond within set deadlines or at all.
107. HMT should also ensure that it is conducting appropriate searches for the requested information from the start of the request and avoid information being missed and therefore delayed. The Commissioner would remind HMT of the comments he made in decision notice IC-183296-R6T7 (paras 24-26)⁸
108. Whilst internal reviews are not a statutory requirement under FOIA, the Commissioner still considers them to be good practice. An Internal review should be completed within 20 working days, but no more than 40 working days. HMT did not complete the internal review until over 80 working days, this again does not demonstrate good practice.
109. Whilst the Commissioner acknowledges that there was a timeliness issue with HMT, the complainant also waited over 40 working days to seek an internal review, which further delayed matters.

⁸ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4025351/ic-183296-r6t7.pdf>

Right of appeal

110. 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

111. 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.

112. 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

Roger Cawthorne
Senior Case Officer
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