

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 August 2018

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

Decision (including any steps ordered)

1. The complainant has requested details of all the public authority's transactions over £25,000 from April to September 2017 in line with the government's guidance on publishing spending data. The public authority withheld the requested information relying on section 22(1) FOIA.
2. The Commissioner's decision is that the public authority was not entitled to rely on section 22(1) FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information.
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 FOIA and may be dealt with as a contempt of court.

Request and response

5. The complainant submitted a request for information to the public authority on 10 November 2017 in the following terms:

"I'd like to make a request under the Freedom of Information act for all transactions over £25,000 from April to September 2017. Please provide the data in a machine readable format (preferably csv). As a minimum, please make sure to include the date, value and recipient of each transaction. Please also provide details on the procurement category of each transaction if you have it.

Your team may also be interested in the guidance on producing spending data: <https://www.gov.uk/government/publications/guidance-for-publishing-spend-over-25000> "

6. The public authority responded on 5 December 2017. It confirmed that it held information within the scope of the request which it considered exempt on the basis of section 22 FOIA.
7. The complainant requested an internal review of this decision on 21 December 2017.
8. On 12 January 2018 the public authority wrote to him with details of the outcome of the review. The review upheld the original decision.

Scope of the case

9. The complainant contacted the Commissioner on 15 January 2018 in order to complain about the public authority's handling of his request specifically the decision to withhold the information held on the basis of section 22(1) FOIA.

Reasons for decision

Section 22(1) FOIA

10. Section 22(1) states¹:

“(1) Information is exempt information if—

(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),

(b) the information was already held with a view to such publication at the time when the request for information was made, and

(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).”

Public authority's submission

11. The public authority's submission provided on 8 June 2018 is summarised below.
12. The public authority explained it endeavours to publish spend data a month in arrears and every effort is made to follow guidelines on publication of data. However, due to established and other administrative processes, at times delays may be experienced in the publication of spend data.
13. At the time of the request it held the requested information in its reporting system but not in report format. It also intended to publish the information in line with the department's transparency obligations.
14. However, it considers that it was reasonable in all the circumstances to withhold the requested information until publication owing to a need for validation, formatting compatibility and verification of the data prior to publication. The information held is raw data extracted from the reporting system. The data must be checked for accuracy and interested stakeholders consulted prior to publication to ensure sensitive data is not released. Ongoing verification work is nearly complete and it is

¹ The full text of section 22 FOIA is available here:
<http://www.legislation.gov.uk/ukpga/2000/36/section/22>

expected that the requested information will be published in the next few weeks.

15. With respect to the balance of the public interest, the public authority acknowledged that there is a public interest in publishing spend data to increase transparency and accountability of public spending. In recognition of this public interest it was working through the back log to ensure that the data is published as quickly as possible.
16. However, there was a strong public interest in the public authority having the space required to quality assure the information and ensure that the data it publishes is accurate and that sensitive information is not published in error. It is not in the public interest to release inaccurate or otherwise sensitive data.

Commissioner's analysis

24. In order for a public authority to successfully rely on section 22(1) FOIA, there must have been a settled intention to publish the requested information prior to the request being received. Furthermore, it is reasonable in all the circumstances to withhold the requested information until publication. Finally, should both these conditions be met, the public interest in withholding the requested information must outweigh the public interest in disclosing it.
25. The public authority has explained that at the time of the request there was a settled intention to publish the requested information (i.e. the withheld information) in line with the department's transparency obligations. The Commissioner understands this to mean in line with guidelines on publication of spend data, in particular, guidance for publishing spend over £25,000.² Paragraph 2.10 of the guidance in relation to timing of publication states:

"Spend is to be published one month in arrears, i.e. by the last working day of the month following the month to which the data relates. If the data is available before the end of the month, it should be published as soon as the department has cleared it for release. This data is to be published in individual monthly files."

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/662332/guidance_for_publishing_spend.pdf

26. In light of the above, the Commissioner accepts that at the time of the request in November 2017 there was a settled intention by the public authority to publish the withheld information.
27. The public authority has argued that it was reasonable in all the circumstances to withhold the information until publication owing to a need for validation, formatting compatibility and verification of the data prior to publication.
28. The public authority provided copies of the draft spend reports to the Commissioner for inspection at her request. She notes that the later draft reports are missing the costs for some of the procurements. Most of the procurements in these reports include the reported costs. The earlier draft reports from April to June 2017 are however all missing the procurement costs for each reporting period.
29. The Commissioner must assess whether it was reasonable to withhold publication at the time of the request in November 2017. In the Commissioner's view, it was not unreasonable to expect the withheld information published at the time of the request. It is clear from the government's guidance that departments are expected to publish spend data for transactions over £25,000 a month in arrears at most. Paragraph 2.11 of the guidance goes further:

"You should not hold up the publication of your data where you have unresolved individual queries. You should publish the cleared data within the publication timescales, and amend the data at a later date if necessary. See section 2.5 for further detail on applying redactions to the data."
30. The guidance was produced as part of the drive to improve the transparency of how public funds are used in order to hold Government to account and to drive down costs within Government. The government clearly recognises that the timing of publications is crucial to achieving its objective. Paragraph 1.2 of the guidance adds:

"The focus of the guidance is currently on how, pragmatically, to make the data available quickly rather than seeking to achieve full alignment across every entity."
31. The public authority obviously recognises that there is a drive to publish spend data quickly which is why it advised the Commissioner that it expected to publish the withheld information within a few weeks. The Commissioner is disappointed that the public authority has yet to meet this commitment.
32. The public authority was (at the time of the request) clearly far behind expected publication deadlines given the requested spend data covered

the period April to September 2017. The spend data for April 2017 was 6 months in arrears at the time of the request. While it could have been reasonable to delay publication of the most recent requested spend data in September 2017 for the reasons given by the public authority, same could hardly be said for the earlier data from April to August. The guidance clearly envisages that departments will publish spend data as quickly as possible and not take over 6 months.

33. The Commissioner is disappointed that discussions with the public authority during the course of her investigation has not resulted in the publication of the withheld information. The public authority has had over 7 months since the request was made up to the time of drafting this notice to complete the validation and verification of the data. By the Commissioner's calculation, the spend data for April alone has been delayed for over a year. There is no strong indication that the data for the following months would be published anytime soon.
34. In light of the above the Commissioner does not accept that it was reasonable in all the circumstances to withhold the requested information. Delaying publication for such a length of time is tantamount to defeating the objective of improving transparency and accountability in the expenditure of public funds.
35. The Commissioner has therefore concluded that the public authority was not entitled to engage the exemption.
36. She has not considered the balance of the public interest in light of her decision that the exemption is not engaged.

Right of appeal

37. 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@hmcts.gsi.gov.uk

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

38. 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.
39. 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

Terna Waya
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