

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

Date: 24 May 2023

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

Decision (including any steps ordered)

1. The complainant has requested correspondence between Danny Alexander, vice president and corporate secretary of the Asian Infrastructure Investment Bank and HM Treasury and minutes of relevant meetings.
2. The Commissioner's decision is that HM Treasury correctly relied on sections 27(1)(a), 35(1)(a) and 40(2) to withhold requested information from the complainant.
3. The Commissioner does not require the public authority to take any steps.

Background

4. The Asian Infrastructure Investment Bank (AIIB) is an International Organisation which the UK joined in 2015. The UK was one of the first advanced economies to join the AIIB. Sir Danny Alexander was appointed as a Vice President at the AIIB shortly afterwards.

5. The meeting that this FOI request relates to was an in-person engagement between the then Chancellor of the Exchequer and Sir Danny Alexander.

Request and response

6. On 27 July 2022, the complainant wrote to the public authority and requested information as follows.

"Please provide a copy of all correspondence between Danny Alexander, vice president and corporate secretary of the Asian Infrastructure Investment Bank and:

- Ministers of the Treasury

- The first or second permanent secretaries of the Treasury.

Relating to the AIIB or China from 13 February 2020 to date.

I am happy to limit the scope of my request to electronically held records, and departmental email accounts for all persons, except in relation to the Chancellor of the Exchequer.

In relation to Rishi Sunak and Nadhim Zahawi, please conduct a search of all forms of electronic departmental correspondence used and ensure a search is conducted of any private email account, WhatsApp, Signal, or other private instant messaging service used for correspondence with Mr Alexander on government business.

Please note ICO guidance requires searches of privately held correspondence, so please confirm by return in writing that these searches have been conducted, even if no government information is located.

2) Please provide a list of all meetings between the Chancellor and Danny Alexander concerning AIIB or China from 13 February 2020 to date.

Please provide.

- A list of these meetings, including topics.

- A copy of any minutes recorded of these meetings

-A copy of any briefings prepared ahead of these meetings for the Chancellor.

-A list of the titles of any documents considered at these meetings.

Please note FOIA is an information regime, not a documents regime, and all records held must be provided in redacted form that are not subject to an exemption after a full and proper public interest test.”

7. On 23 September 2022 HM Treasury provided a response. It explained that it held no information in relation to part 1 of the request. In relation to part 2 of the request it confirmed that the Chancellor of the Exchequer met with Sir Danny Alexander on 15 November 2021 to discuss the UK's role in the AIIB. It explained that it was withholding information in relation to this meeting under section 27(1)(a) - where release would be likely to prejudice relations between the UK and any other State - and section 27(1)(b) - where disclosure would be likely to prejudice relations between the UK and any international organisation. In addition, third party personal data was withheld under s40(2).
8. HM Treasury undertook a review of the case¹. It upheld the original handling of the request, concluding that no information was held in relation to part 1 of the request, and that section 27 (it did not reference particular sub-sections) was engaged and that the balance of the public interest continued to rest with non-disclosure of the information within the scope of part 2 of the request. It confirmed that the personal data withheld under section 40(2) was that of junior officials.

Scope of the case

9. The complainant initially contacted the Commissioner on 24 October 2022 to complain about the way his request for information had been handled.
 10. Following an ICO letter of 2 November 2022, HM Treasury reviewed its approach and released some additional information to the complainant
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¹ 21 October 2022

on 17 January 2023. This being the pre-meeting briefing and the paragraph prepared for the Chancellor with redactions made under sections 27(1)(a) and (b), and two new exemptions, section 29(1)(a) (economic interests of the UK) and section 35(1)(a) (formulation or development of government policy)”

11. On the 29 March 2023, the complainant informed the Commissioner that he did not take issue with HM Treasury’s reliance on section 40(2) to withhold personal data.
12. The Commissioner considers he must determine whether HM Treasury correctly withheld requested information from the complainant by relying on sections 27(1)(a), 27(1)(b), 29(1)(a), 35(1)(a) and 40(2).

Reasons for decision

13. Section 27(1)(a) applies to information whose disclosure would harm relations between the United Kingdom and any other State.

HM Treasury’s submissions

14. HM Treasury has provided the Commissioner with full and reasoned submissions why the exemption afforded by section 27(1)(a) is engaged. However, the Commissioner cannot replicate them here, as to do so would divulge the withheld information and thus defeat the purpose of the exemption.

Complainant’s submissions

15. The Treasury has applied this exemption in a blanket manner. This is not permitted under FOIA, which is an information and not a documents regime, unless every part of the requested information is exempt. It seems highly unlikely that all material is exempt, as some will be unlikely to trigger an exemption, or will be already public.

Commissioner’s Reasonings

16. The Commissioner has viewed and considered a copy of the withheld information and taken cognisance of the parties’ submissions.
17. For a prejudice-based exemption, such as section 27, to be engaged the Commissioner believes that three criteria must be met:

18. Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information were disclosed must relate to the applicable interests within the relevant exemption.
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice, which is alleged must be real, actual or of substance.
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. Regarding the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
19. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested that in the context of section 27(1), prejudice can be real and of substance 'if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise been necessary'.
20. The Commissioner has examined the specific information to which section 27(1)(a) has been applied. He cannot describe it in detail since to do so would defeat the purpose of the exemption.
21. Regarding the first criterion of the test set out above, the Commissioner accepts that the type of harm that the HM Treasury believes would be likely to occur if the information were disclosed is applicable to the interests protected by sections 27(1)(a) of FOIA.
22. Regarding the second and third criteria, the Commissioner is satisfied, based on the content of the withheld information and the HM Treasury submissions to him, that there would be a causal link between disclosure of the withheld information and harm occurring to the UK's relations with China. Furthermore, the Commissioner is also satisfied that the risk of such prejudice occurring is one that is more than a hypothetical risk.
23. The Commissioner, for the above reasons, has reached his decision that the exemption is engaged.

24. Section 27 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption contained at section 27(1)(a) outweighs the public interest in disclosing the information.

HM Treasury's submissions

25. It recognises the broad public interest in further public understanding of the issues the department deals with. It is in the public interest for the work of government departments to be transparent and open to scrutiny including in interaction with international organisations, particularly one that the UK joined relatively recently (in 2015), that is located in China, and that has a former senior HMG minister serving as a Vice President. It recognises that Sir Danny Alexander is a former Treasury minister and that there is a public interest in due scrutiny to address any reservations, for example of any perceptions of conflicts of interest. It notes that this meeting was disclosed in HM Treasury's transparency data release:

https://www.gov.uk/government/publications/hmt_ministers-meetings-hospitality-gifts-and-overseas-travel-1-october-to-31-december-2021.

26. However, it is important that the UK retains influence on international issues. Dialogue with stakeholders related to another country is an important part of the diplomatic process and enables the UK to influence international matters to the benefit of the UK. Release of the information would be likely to prejudice the UK's relationship with China as the Government of China may consider it negatively. It notes the sensitive nature of the UK's relationship with China and does not believe that it is in the public interest to release information that could create damage to the relationship, reducing the UK's diplomatic influence in China. It concluded that the balance of the public interest falls in favour of non-disclosure.

Complainant's Submissions

27. While there is a public interest in maintaining relations with international bodies, the arguments the Treasury makes are generic, and it has failed to make the case for any specific reasons in the circumstances of this case as to why there is a stronger public interest in disclosure. This suggests that a properly balanced public interest test has not been completed.
28. Danny Alexander is a former senior Treasury minister, and as such has privileged access to officials and an enhanced understanding of how the Treasury works. In his role at AIIB, and the context of his interactions

with the Treasury, it is reasonable to assume that at least some lobbying took place in these interactions.

29. Where a former public official has access at least in part derived from their former office, there is a considerably enhanced public interest in transparency, to ensure they are not misusing this access in service of their employer for personal financial gain. This has been underscored by the recent Greensill² scandal involving Alexander's former coalition colleague David Cameron.
30. In addition, lobbyists cannot expect privacy around their affairs. As set out in First-Tier Tribunal decision *Corderoy v Information Commissioner & Department for Exiting the European Union (EA/2019/0109 & 0111)*³, Alexander cannot have a reasonable expectation that its lobbying interactions would be kept secret. The tribunal commented in that case that:
 - "Organisations which seek to influence policy formation can, under normal circumstances, expect to see their contributions summarised and publicly disclosed or disclosed by the organisations themselves as part of their own direct engagement with the public or their own widespread stakeholders from which it readily moves into the public domain."
31. Thirdly, whilst the AIIB is an international body, it is largely funded by China, with the People's Republic having significant influence if not control over its affairs. UK-China relations are at an important moment, given concerns about the country's attempts to grow its foreign influence in authoritarian terms, and its alleged domestic human rights abuses. In this context, there is a clear public interest in transparency where Chinese-backed institutions are lobbying the UK government, if this was done with the appearance of achieving outcomes that were in the PRC's and not necessarily in the UK's, national interest, especially where the lobbying is done through a former UK minister.
32. It is also not clear how a properly redacted document, removing specific financial information about which there is an elevation expectation of privacy, would seriously prejudice relations. As the UK is a shareholder

² [Greensill scandal - Wikipedia](#)

³ [Corderoy, Jenna EA.2019.0109 & 0111 \(22.11.19\).pdf \(tribunals.gov.uk\)](#)

of the organisation, it is unlikely that even if AIIB would prefer full obfuscation about this information, it could simply choose to stop engaging with the UK. This reduces any likely practical impact of the harm suggested by the Treasury.

33. There is also a good case for expedited processing in this case. UK relations with China and China-backed institutions is a current matter of very live public debate, and timely release of relevant information to the public domain is clearly in the public interest. Waiting more than a year for disclosure, as has been the case with recent un-expedited requests, would likely significantly reduce relevance of the information to the debate given its age at the point of release. Such delayed disclosure would undermine the point of the access rights intended by parliament under FOIA, crucially important for public interest reporting.
34. As such, there is a clear public interest in further disclosure of these records.

Commissioner's Reasonings

35. The Commissioner must consider the public interest factors as they were at the time of the refusal notice. Accordingly, the complainant's observations about the diminishing importance of the information at the time of the Commissioner's decision is not relevant.
36. Regarding the complainant's reference to *Corderoy v Information Commissioner & Department for Exiting the European Union*, the Commissioner notes that First-Tier Tribunal decisions are not binding, and the subject matter of that decision is significantly different from this matter. Accordingly for these factors, the Commissioner was not assisted by that decision.
37. In accepting that the exemption at section 27 is engaged the Commissioner has accepted that disclosure of the requested information would be likely to prejudice UK-China relations.
38. The Commissioner recognises that there is a considerable public interest in protecting (by maintaining the exemption) the ability of the UK to protect and promote its interests with other States such as China.
39. The Commissioner agrees that it is important that the UK retains influence on international issues and that dialogue with stakeholders relating to another country is an important part of the diplomatic process and enables the UK to influence international matters to the benefit of the UK. To release the withheld information in question would

jeopardise this process and it is greatly in the public's interest to avoid this.

40. The Commissioner concurs with both parties that UK/China relationships are highly important but fraught with potential or on-going tensions. Given this, the Commissioner's view is that the public authority's assertion that the public interest favours maintaining the exemption is correct. Accordingly, he finds that the exemption was properly relied on by HMT not to provide the complainant with the relevant withheld information.

Section 35

41. There is a small proportion of information which is withheld solely by reliance on section 35.
42. Section 35 of FOIA states: "(1) 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".
43. This exemption is a class based one which means that, unlike a prejudice-based exemption, there is no requirement to show harm for it to be engaged. The relevant information simply must fall within the description set out in the exemption.
44. The Commissioner's view is that the formulation of government policy relates to the early stages of the policy process. This covers the period in which options are collated, risks are identified, and consultation occurs whereby recommendations and submissions are presented to a minister. Development of government policy, however, goes beyond this stage to improving or altering existing policy such as monitoring, reviewing, or analysing the effects of the policy.
45. The Commissioner considers that the purpose of section 35(1)(a) is to protect the integrity of the policy-making process, and to prevent disclosures which would undermine this process and result in less robust, well-considered and effective policies. It ensures a safe space to consider policy options in private. His guidance advises that often policy formulation will continue until the relevant legislation is passed. Where legislation is not required, a public announcement of the decision is likely to mark the end of the policy formulation process.
46. The Commissioner's guidance on section 35(1)(a) sets out that information does not need to have been created as part of the formulation or development of government policy. Information may

'relate to' the formulation or development of government policy due to its original purpose when created, or its later use, or its subject matter. This means that information can engage section 35(1)(a) because it was used to inform the policy position, even if in isolation the information does not obviously relate to government policy.

HM Treasury's Submissions

47. The information in question relates to material in the documents relating to the establishment of the AIIB Special Fund Window⁴, a concessional fund that the AIIB is seeking donors' support. The UK government does not yet have a final agreed policy position on this proposal, which will need to be considered taking into account a range of factors, including value for money, affordability, and the UK's broader international development priorities and international development finance policy. Disclosing information relating to the UK government's consideration of this fund could undermine the UK's ability to engage credibly with the AIIB on the substance of the proposal, in turn reducing its ability to formulate policy in the most informed manner.

Commissioner's Reasonings

48. Having considered the withheld information and HMT's explanations the Commissioner is satisfied that that it comprises information relating to the formulation or development of government policy in relation to the AIIB Special Fund Window. The Commissioner is therefore satisfied that the exemption at section 35(1)(a) is engaged. He 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.

HM Treasury's submissions

49. HM Treasury recognises that there is a public interest in the work of government departments and the policy making process being transparent and open to scrutiny to increase diligence and increase the public understanding of the UK's role at AIIB. However, it considers that the public interest clearly favours maintaining a safe space for officials to share and discuss information with third parties and internally to arrive at fully considered and effective policy decisions. The release of

⁴ [COVID-19 Special Fund Window - AIIB](#)

this information at this point would undermine the policy making process and jeopardise UK influence at the AIIB. It could also impact more broadly on the ability for the UK to achieve its objectives at other international organisations, including those on climate change and gender equality, to the detriment of the UK. The release of the information would also undermine the UK's ability to develop its finance policy, and to fully consider the merits of different delivery options and channels for its international development policy. It considers that the balance of the public interest falls in favour of non-disclosure.

Balance of the public interest

50. 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.
51. Considering all the circumstances of this case, including the extent and content of the withheld information itself, the Commissioner finds that the public interest in maintaining the exemption at section 35(1)(a) outweighs the public interest in the disclosure of this information for the reasons given by HM Treasury. Therefore, HM Treasury was entitled to rely on section 35(1)(a) to refuse to disclose this information.

Section 40 – personal information

52. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
53. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual".
54. HM Treasury is withholding the personal information (names and email addresses) of junior officials. The complainant has informed the Commissioner that he does not take issue with the withholding of personal data. Accordingly, the Commissioner agrees that the public authority can withhold the personal data of junior officials.
55. Having found that sections 27(1)(a), 35(1)(a) and 40(2) together, correctly allowed the HM Treasury to withhold the withheld information, the Commissioner did not go to consider the applicability of the other exemptions also relied upon.

Right of appeal

56. 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

57. 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.
58. 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

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