

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 August 2023

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

#### Decision (including any steps ordered)

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1. The complainant has requested minutes of a 21 September 2022 meeting between Matt Hancock MP and the Chancellor of the Exchequer/Financial Secretary to the Treasury, and correspondence between the same parties between 1 August 2022 and 30 October 2022.
2. HM Treasury withheld the requested information under section 35(1)(a)(formulation or development of government policy).
3. The Commissioner's decision is that HM Treasury correctly withheld the requested information under section 35(1)(a) and that the balance of the public interest favours maintaining the exemption.

#### Request and response

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4. On 25 November 2022, the complainant wrote to HM Treasury (HMT) and requested information in the following terms:

*'Please provide me with the minutes of the meeting between Matt Hancock MP and the Financial Secretary to the Treasury/Chancellor of the Exchequer, which took place on Wednesday 21<sup>st</sup> September'.*

*Please provide me with any correspondence between Matt Hancock MP and the following individuals:*

- *Financial Secretary to the Treasury Andrew Griffith*
- *Chancellor of the Exchequer from September 2022 – October 2022 Kwasi Kwarteng*

*Please search your records between 1<sup>st</sup> August 2022 – 30<sup>th</sup> October 2022'.*

5. HMT responded to the request on 23 December 2022. They confirmed that following a search of their records, they could confirm that they held information within the scope of the request. The information held related to the first part of the complainant's request.
6. HMT advised that the information engaged section 35(1)(a)(formulation or development of government policy) but did not specify which policy or policies the information held related to.
7. In respect of the public interest test, HMT recognised that there is '*an inherent public interest in transparency and accountability of public authorities*' and '*the broad public interest in furthering public understanding of the issues with which public authorities deal*'. HMT also stated that there is clear public interest in the work of government departments being transparent and open to scrutiny to increase diligence.
8. Balanced against the above factors, HMT stated that there is a public interest '*in protecting the Government's ability to discuss and develop policies and to reach well-formed conclusions*'. HMT advised that they considered that there is a strong public interest in protecting information where release would be likely to have a detrimental impact on the ongoing formulation and development of policy. HMT contended that '*there is a strong public interest in protecting against encroachment on the ability of ministers and/or officials to formulate and develop policy options freely and frankly*'. Therefore HMT confirmed that they considered that the balance of the public interest factors lay in favour of withholding the information requested.
9. The complainant requested an internal review on 3 January 2023. The complainant contended that, '*it is very clearly within the public interest to know what was discussed at a meeting between Government Ministers and a former minister who has been paid financial compensation and fees by the industry for which he is meeting government ministers to talk about*'. The complainant referenced a

news article in The Times newspaper from 1 December 2022<sup>1</sup>. The complainant contended that disclosure of the information was *'even more critical if, as you admit in your response, government policy is being formulated at this meeting'*.

10. HMT provided the review on 31 January 2023. The review confirmed that HMT were maintaining section 35(1)(a) to the requested information, and advised that the information held *'relates to the formulation and development of government policy regarding cryptoassets'*. HMT advised that, *'this is a live area of government policy, on which the government will provide further details in due course'*.
11. In their review, HMT advised that they acknowledged the points which the complainant had made relating to public interest in the meeting, but that they maintained that the public interest balance lay in favour of withholding the information, *'as there is a strong public interest in protecting against encroachment on the ability of ministers and/or officials to formulate and develop policy options freely and frankly'*. HMT contended that it is in the public interest that ministers and officials should be allowed adequate time and space to thoroughly explore policy options, and *'this can include discussions with third parties/stakeholders'*.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 31 January 2023 to complain about the way his request for information had been handled.
13. In submissions to the Commissioner the complainant contended:

*'It is very within the public interest to know what was discussed at a meeting between Government Ministers and a former minister who has been paid financial compensation and fees by the industry for which he is meeting government ministers to talk about. The fact that Mr Hancock has taken money from the industry for which he was lobbying on behalf of has been previously reported (referenced previous Times story). The government have argued that protecting against encroachment on the ability of ministers and /or officials to formulate and develop policy options freely and frankly. However, I believe that this is overridden by the public interest test, not least because it is*

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<sup>1</sup> [Matt Hancock had crypto talks with Kwasi Kwarteng months after US jaunt \(thetimes.co.uk\)](https://www.thetimes.co.uk)

*important to know whether policy was formulated as a result of a meeting with an MP taking money from the industry he was lobbying on behalf of'.*

14. During his investigation, the Commissioner asked HMT to confirm whether they held any information within the second part of the complainant's request, i.e. correspondence between Matt Hancock and the named individuals between 1 August and 30 October 2022.
15. HMT confirmed that they did not hold any information within scope of the second part of the request. They advised that policy officials who deal with cryptoassets made date limited searches (1 August to 30 October 2022) of their mailboxes and the department's electronic records management system using the following search terms:
  - "Andrew Griffith"
  - "FST"
  - "Financial Secretary"
  - "Cryptoassets"
  - "Andrew Griffith Matt Hancock"
  - "Matt Hancock"
  - "Andrew Griffith Cryptoasset meeting"
  - "Matt Hancock Cryptoasset"
16. HMT confirmed that the relevant Private Offices also undertook searches using the same search terms. No relevant information was identified.
17. The Commissioner considers that the scope of his investigation is to determine whether HMT were correct to withhold the requested information (within the first part of the complainant's request) under section 35(1)(a) of the FOIA.

## **Reasons for decision**

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

18. Section 35(1)(a) applies to information if it relates to the formulation or development of government policy.
19. Although 'relates to' is given a wide interpretation, as the Court of Appeal noted in *Department of Health v The Information Commissioner*

and Mr Simon Lewis [2017] EWCA Civ 374, of the First-Tier Tribunal's findings in that matter, the phrase:

*'Should not be read with uncritical liberalism as extending to the furthest stretch of its indeterminacy, but instead must be read in a more limited sense so as to provide an intelligible boundary, suitable to the statutory context', and that a 'mere incidental connection between the information and a matter specified in a sub-paragraph of s.35(1) would not bring the exemption into play; it is the content of the information that must relate to the matter specified in the sub-paragraph'.*

20. Therefore, there must be a clear and tangible relationship between the content of information withheld under this exemption and the process that is being protected.
21. The Information Tribunal has made it clear that in cases where section 35(1)(a) applies, the timing of the request is central to the consideration of the public interest test. This is because once the formulation or development of a policy has been completed, the risk of prejudicing the policy process by disclosing information is likely to be reduced and so the public interest in maintaining the exemption will require less weight.
22. Furthermore, the Tribunal has made it clear that policy formulation and development is not one which is a 'seamless web', i.e. a policy cycle in which a policy is formulated following which any information on its implementation is fed into the further development of that policy or the formulation of a new policy.
23. In submissions to the Commissioner, HMT explained that over recent years cryptoassets<sup>2</sup> and the activities underpinning their use (or 'crypto') have evolved into an extensive and complex ecosystem. The Government and financial services regulators, including the Financial Conduct Authority (FCA) are already taking some steps to bring cryptoassets within the financial services regulatory framework.
24. HMT further explained that:

*'However, currently most cryptoasset activities are not currently subject to broader financial services regulation. Therefore, the government and the regulators have been developing a set of proposals for bringing these cryptoassets into the existing financial services regulatory framework. As part of this work, we have been actively engaging with*

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<sup>2</sup> A cryptographically secured digital representation of value or contractual rights that uses a form of distributed ledger technology and can be transferred, stored, or traded electronically.

*industry and relevant stakeholders to better understand the sector and its challenges. This has been particularly important as a result of recent events in the cryptoasset market, such as the failure of FTX, one of the largest cryptoasset exchanges, in November 2022. As a result, the government considers that these events have reinforced the need for timely, clear and effective regulation. However, this has resulted in greater media attention to the cryptoasset sector’.*

25. HMT advised the Commissioner that at the time of the complainant’s request, officials were working on the consultation paper on the future financial services regulatory regime for cryptoassets, which was published on 1 February 2023<sup>3</sup>. As the consultation was currently open, HMT confirmed that the policy is still under development.
26. In submissions to the Commissioner, HMT confirmed that the withheld information relates to the Government’s policy approach to cryptoasset regulation and positioning of the UK as a place open for cryptoasset business. HMT advised that *‘these are live areas of government policy development, and government officials and Ministers have been seeking views from a broad range of stakeholders with an interest in the space; this included Matt Hancock in light of his role as a member of the Advisory Council for The Digital Economy Initiative’.*
27. Having had sight of the withheld information, the Commissioner is satisfied that it relates to the formulation or development of the Government’s policy on cryptoasset regulation. Consequently, the Commissioner is satisfied that the information is exempt under the exemption.
28. Section 35(1)(a) is subject to the public interest test and the Commissioner must decide whether the public interest factors in favour of disclosing the information outweigh those public interest factors which favour maintaining the exemption.

### **Public interest test**

#### *Public interest factors favouring disclosure*

29. As noted, in their responses to the request HMT recognised the inherent public interest in transparency and accountability of public authorities, and *‘the broad public interest in furthering public understanding of the issues with which public authorities deal’*, but evidenced no recognition

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[TR Privacy edits Future financial services regulatory regime for cryptoassets vP.pdf \(publishing.service.gov.uk\)](#)

or appreciation of the public interest weight and value in disclosure carried by the *specific* withheld information.

30. In submissions to the Commissioner, HMT stated that they understood that there is a public interest in upholding standards of integrity, *'particularly where it concerns the registered interests of MPs'*. HMT also recognised that *'there is currently much public debate surrounding cryptoassets and whether they should be regulated or not – with further arguments around the value of cryptoassets and the innovation they may or may not provide'*. HMT recognised that disclosure of the withheld information *'could be of public interest in feeding into this debate'*.
31. The complainant has contended that, *'it is very clearly within the public interest to know what was discussed at a meeting between Government Ministers and a former minister who has been paid financial compensation and fees by the industry for which he is meeting government ministers to talk about'*. The complainant has contended that the public interest in disclosure is particularly strong, if government policy was being formulated at the meeting.

#### *Public interest factors favouring maintaining the exemption*

32. In submissions to the Commissioner, HMT advised that at the time they considered the request, and at the present time, they determined that the public interest in disclosing the withheld information was outweighed by the public interest in protecting the Government's ability to discuss and develop policies and to reach well-formed conclusions.
33. HMT advised that they consider that it is important not to undermine the 'safe space' required for effective policy development, and contended that disclosure of the withheld information may prejudice the ability of HMT to discuss complex policy issues with stakeholders during the period of policy development.
34. HMT contended that the disclosure of the withheld information, and any subsequent debate in the media, *'may have prevented or prejudiced the development of policy by causing undue distraction or hindered the consideration of all options'*. This, HMT contended, would not be in the public interest, given that there is much disagreement about the approach to regulating cryptoassets.

#### *Commissioner's consideration*

35. As HMT will be aware from the Commissioner's previous published decisions in section 35 cases, the Commissioner entirely recognises and appreciates the strong and important public interest in protecting and maintaining a safe space for government to formulate and develop policy/policies.



36. However, the weight that the Commissioner will accord to the above public interest will necessarily differ from case to case, depending on the individual facts and circumstances. As noted above, key to the determination of the public interest in every case is the timing of the request.
37. As the Upper Tribunal recently confirmed in *Montague v The Information Commissioner and The Department of Trade (UA – 2020- 000324 & UA-2020-000325) [13 April 2022]*<sup>4</sup>, the time for judging the competing public interests in a request is the time when the public authority should have given a response in accordance with the timeframe required by the FOIA. Therefore the appropriate time in this case is 23 December 2022 (i.e. 20 working days after the complainant's request of 25 November 2022).
38. The complainant has relied upon an aforementioned news article in The Times, dated 1 December 2022, in his contention that there is a public interest in disclosure of the withheld information because of Mr Hancock's lobbying on behalf of the cryptoasset industry.
39. The Commissioner notes that the article reports that Mr Hancock received £11,638 from Hawksmoor Technology Advisers, a digital consultancy, to attend a Permissionless conference on cryptocurrency in the US, the monies covering Mr Hancock's flights, accommodation and ticket for the event. The article also reported that one month after his meeting with Chancellor Kwarteng and Mr Griffith, Mr Hancock spoke to the Lendit Fintech conference, for which he received a fee of £10,000. In his speech, Mr Hancock said that the Government should be 'facilitating' a cryptocurrency 'revolution'.
40. However, the same newspaper article noted that a spokesman for Mr Hancock said that he had not lobbied on behalf of any companies and that all his interests had been properly declared. "*Matt does not own any cryptocurrencies and he has not invested in any either*", the spokesman said, adding that, "*in fact, when he's been offered digital assets, he's turned them down to ensure he retains the freedom to talk about them*". The spokesman continued:
- "Matt isn't lobbying on behalf of any companies as he is not contracted to them. He's been paid twice to talk about the technology – something he has a deep understanding of. Matt has publicly said on many occasions – including in Parliament – that the UK should be a place that*

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<sup>4</sup> [IN THE UPPER TRIBUNAL \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/111111/Upper_Tribunal_Judgment_Montague_v_Information_Commissioner_and_Department_of_Trade.pdf)



*welcomes innovation, including digital assets. He believes the technology supporting cryptoassets will be completely revolutionary and championing digital assets is the right thing to do for the UK economy. Everything has been declared properly and no rules have been broken”.*

41. However, although Mr Hancock has not lobbied on behalf of any specific companies involved in cryptoassets, the Commissioner notes that his enthusiasm and promotion of the sector is a matter of public record. Mr Hancock sits as a member of the Advisory Council of The Digital Economy Initiative (previously the Digital Economy Institute and set up in March 2022), an independent think tank dedicated to promoting effective public policy for cryptocurrencies and other digital economy applications<sup>5</sup>.
42. In an 18 December 2022 article<sup>6</sup> focussing on Binance<sup>7</sup> Chief Executive, Changpeng Zhao (widely known as CZ), The Sunday Telegraph noted that Mr Hancock had '*aligned himself with Binance*', reporting that Mr Hancock had met with Mr Zhao in Parliament earlier that year and they had exchanged friendly tweets. The article reported that in a speech at a crypto event in September 2022, Mr Hancock had '*attacked the FCA*' and warned they risked a "*block on novel businesses just because you don't understand them*". The newspaper noted that Binance is an "*institutional member*" of lobby group CryptoUK.
43. The Commissioner notes that Mr Hancock's meeting of 21 September 2022 with the then Chancellor and then Financial Secretary to the Treasury predates the opening of the consultation period on the future financial services regulatory regime for cryptoassets (which opened on 1 February 2023). This is significant in terms of the safe space arguments advanced by HMT, as it means that Mr Hancock was not engaging in discussions which had been opened up for general external comment (a scenario which would usually weaken safe space arguments).
44. At the time of the meeting, Mr Hancock was a backbench Conservative MP, having resigned as Health Secretary on 26 June 2021. As noted, he was a well established and publicly known enthusiast for the cryptoasset sector. But given that he had no cabinet position or portfolio dealing with the same, the Commissioner considers that the withheld information in this case carries a significant and legitimate public interest in disclosure, as it would provide transparency and

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<sup>5</sup> [The Digital Economy Initiative](#)

<sup>6</sup> [Binance: crypto's last man standing confronts a hostile world \(telegraph.co.uk\)](https://www.telegraph.co.uk)

<sup>7</sup> The world's largest cryptocurrency exchange by trade volume.

accountability in respect of Mr Hancock's engagement with Government in this area of policy, and vice versa.

45. As a colleague with a particular interest and awareness of matters surrounding the cryptoasset sector, Mr Hancock may not have been an unusual choice for the Chancellor and Financial Secretary to meet with to discuss the development of the Government's policy in this area. However, the Commissioner recognises that not every individual would be afforded such ready access to the centre of government or such opportunity to influence the development of government policy. An MP with a particularly high public profile, there is a public interest in knowing what discussions Mr Hancock has had with the Government in respect of policy development in this area.
46. However, at the time of the complainant's request (and at the current time) the Commissioner recognises and appreciates that the Government's policy towards cryptoasset regulation remained very much at the development stage, with no approach or decision having been made and consequently no implementation of the policy.
47. The Commissioner therefore considers that the withheld information was particularly sensitive, and that disclosure of the meeting minutes would have been likely to seriously undermine the important and well established legitimate safe space for policy development. Disclosure would similarly have been likely to prejudice the ability of HMT to discuss the complex and contentious issues surrounding cryptoasset regulation during the period of policy development.
48. The Commissioner recognises that where lobbyists are involved in discussions about government policy in any given area, then they are less likely to be inhibited in their contributions by the possibility of disclosure as they are trying to further their own agenda by influencing departments. That is to say, lobbyists are likely to be less susceptible to the 'chilling effect' that can be caused by disclosure. In this particular case, whereby Mr Hancock can reasonably be described as a lobbyist for the cryptoasset sector generally, rather than any particular cryptoasset company, the Commissioner recognises the possibility that disclosure of the withheld information may not have appreciably deterred Mr Hancock from further engaging with Government in this policy area.
49. However, the Commissioner is satisfied, having had sight of the withheld information, that its disclosure at the time of the request would have seriously encroached upon the ability of Ministers to formulate and develop policy options in the cryptoasset regulation area freely and frankly. The Commissioner recognises and accepts that effective policy formulation and development requires the important safe space and protection from premature disclosure of sensitive or confidential

information which would undermine or otherwise prejudice the policy formulation or development process.

50. Therefore, whilst the Commissioner considers that the withheld information carries a legitimate and substantial public interest value and weight in terms of transparency and accountability, due to the factors explained above, most notably the timing of the request, the Commissioner is satisfied that the public interest in disclosure of the withheld information is outweighed by the stronger public interest in maintaining the section 35(1)(a) exemption to the same.

## **Right of appeal**

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51. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

52. 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.

53. 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**  
**Principal Adviser**  
**Information Commissioner's Office**  
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