

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 March 2023

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

Decision (including any steps ordered)

1. The complainant has requested from HM Treasury ('HMT') all communications and information about meetings between the then Chancellor, Rishi Sunak ('Chancellor'), and the Governor of the Bank of England, Andrew Bailey ('Governor'), from 21 October to 4 November 2021.
2. HMT disclosed some information but refused to provide information relating to a meeting held on 20 October 2021, citing section 29 of FOIA (prejudice to the economy). During the course of the Commissioner's investigation, HMT confirmed that it was also seeking to rely on section 36(2)(c) (prejudice to effective conduct of public affairs) and section 40(2) (personal data).
3. The Commissioner's decision is that HMT has correctly applied section 29(1) to the withheld information.
4. The Commissioner requires no steps to be taken as a result of this decision.

Background

5. The Commissioner understands that the Chancellor had a bilateral meeting with the Governor on 20 October 2021 to discuss monetary policy, narratives on inflation, and to talk through the forthcoming budget.
6. The Chancellor presented the Autumn Budget and Spending Review on 27 October 2021¹.
7. The Bank of England have specific statutory responsibilities for setting policy for interest rates. The Government sets the inflation target. The Bank of England then set interest rates at what it thinks to be the most appropriate level to achieve the inflation target.
8. The Bank of England's Monetary Policy Committee (MPC) meets eight times a year to set monetary policy to meet the Government's 2% inflation target. At its meeting ending on 2 November 2021, the MPC voted to maintain the interest rate at 0.1%². It had been widely predicted at that time that interest rates were going to rise to 0.25%³.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1043688/Budget_AB2021_Print.pdf

² <https://www.bankofengland.co.uk/monetary-policy-summary-and-minutes/2021/november-2021>

³ <https://www.bbc.co.uk/news/business-59160991>

9. The Commissioner understands that raising interest rates is the Bank of England's key tool in reducing inflation⁴. In November 2021 inflation was 5.1% compared to 0.3% in November 2020.⁵

Request and response

10. On 9 November 2021, the complainant made the following request for information to HMT:

"1) Please disclose all communications, including but not limited to emails (from official and private accounts), text messages and WhatsApp messages between the Chancellor Rishi Sunak and the Governor of the Bank of England Andrew Bailey from 21st October 2021 and 4th November 2021.

I would like to remind you of the recent updated guidance from the ICO on official communications held in non-corporate communication channels which can be found here <https://ico.org.uk/for-organisations/foi-and-eirguidance/official-information-held-in-non-corporate-communications-channels/> Please read my FOI request in this context – I would like all communications covered in the scope of my request across any and all messaging platforms between the two named individuals on this topic.

2) Please disclose a list of all meetings between Rishi Sunak and Andrew Bailey between 17th October 2021 and 4th November 2021. I would like this list to include the date of the meetings, the minutes of the meetings, and any other supporting documents produced for the meetings – including agendas, analyses, statistics etc."

11. On 7 December 2021, HMT confirmed that it did hold information within the scope of the request. HMT disclosed that the Chancellor had a bilateral meeting with the Governor on 20 October 2021 to discuss

⁴ <https://www.bankofengland.co.uk/explainers/why-are-interest-rates-in-the-uk-going-up>

⁵ <https://www.bankofengland.co.uk/explainers/what-is-inflation>

the economy. In addition, HMT confirmed that two further meetings between them took place during the United Nations Climate Change Conference ('COP26') Finance Day on 3 November 2021 – a COP26 Finance Breakfast and a COP26 Evening Drinks reception.

12. HMT confirmed that in relation to part two of the request it held information regarding the meeting on 20 October 2021 but refused to provide it, citing section 29 of FOIA. HMT stated that the public interest balance fell in favour of non-disclosure because of the overwhelmingly strong public interest in preventing the UK's economic interests and the UK Government's financial interests from being harmed through the release of the information.
13. In relation to part one of the request, HMT confirmed that there were no communications between the Chancellor and Governor between 21 October and 4 November 2021.
14. The complainant requested an internal review on 21 January 2022. He said:

"The public interest test in fact favours disclosure for the following reasons. The meetings in the time frame that I have asked for surround the decision of the Bank of England at that time to keep interest rates at 0.1%. As you are aware, interest rates and inflation are closely linked, and inflation has recently hit a 30-year high of 5.6%. This is, in turn, having a huge impact on millions of UK citizens as the cost of living soars.....The public, many of whom are living through and being adversely affected by the harshest economic circumstances in decades, have a pressing interest in being made aware of the conversations being had between the elected government of the day and the Bank of England on these decisions that hit them in their bank account and pocket..."
15. HMT provided an internal review on 21 February 2022 in which it maintained its original position to withhold the information under section 29(1) of FOIA.
16. In its submissions to the Commissioner dated 14 March 2023, HMT clarified that HMT were relying on both subsections (a) and (b) of section 29(1) and, additionally, HMT sought to rely on section 36(2)(c) (prejudice to effective conduct of public affairs) and section 40(2) (personal data) of FOIA.
17. The Commissioner acknowledges that public authorities may at any stage seek to rely on an exemption or exclusion not previously claimed. This was confirmed by the Upper Tribunal in the case of

[McInerney v IC and Department for Education \[2015\] UKUT 0047 \(AAC\)](#).

18. The Commissioner's investigation in this case first focused on whether HMT was entitled to rely on sections 29(1)(a) and 29(1)(b) to refuse the request.

Reasons for decision

19. The Commissioner has been provided with an unredacted copy of the withheld information.

20. The withheld information comprises of:

- internal HMT emails about the arrangements for and subject matter of the 20 October 2021 meeting,
- a briefing note for the meeting prepared for the Chancellor by HMT officials, and
- a short post-meeting summary by an HMT official of the main points the Governor made.

21. HMT also explained to the Commissioner that the Chancellor has regular meetings with the Governor to share views on the outlook for the economy, inflation, monetary and fiscal policy, and to talk through forthcoming budgets (here, the forthcoming budget was the Autumn Budget and Spending Review dated 27 October 2021⁶).

22. HMT has applied sections 29(1)(a) and (b), and 36(2)(c) of FOIA to the withheld information in full. Section 40(2) has been applied to the names of the junior officials.

⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1043688/Budget_AB2021_Print.pdf

Section 29(1)(a) - prejudice to the economic interest of the United Kingdom

23. Section 29 states:

“(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(a) the economic interests of the United Kingdom or of any part of the United Kingdom, or

(b) the financial interests of any administration in the United Kingdom, as defined by section 28(2).”

24. Section 29(1)(a) of FOIA states that information is exempt information if its disclosure would, or would be likely to, prejudice the economic interests of the United Kingdom or any part of the United Kingdom.

25. For a prejudice-based exemption, such as section 29(1), to be engaged the Commissioner believes that three criteria must be met:

- First, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;

- Second, 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;

- Third, 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. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.

26. The Commissioner understands that HMT considers that disclosure of the withheld information would be likely to prejudice the economic interest of the UK.

27. HMT has explained that disclosure of the information withheld under this exemption would be:

“likely to have wide-ranging repercussions not just on the government’s ability to develop effective policies but also on its

ability to manage the economy and protect national and international interests.”

28. The Commissioner understands from this that HMT are arguing that disclosure would be likely to undermine the UK's economic interests because it would release details of the Chancellor's and Governor's discussions about the economy, inflation, monetary and fiscal policy that would undermine the Chancellor's ability to achieve outcomes that support UK economic interests.
29. HMT also argued that disclosure of the withheld information would be likely to prejudice the economic interest of the UK as:

“Confidentiality of meetings between the Chancellor and governor facilitates an open and honest discussion. To enable effective decision making it is important for the Treasury and the Bank to discuss their respective outlook for the economy and policy. Closing off this confidential channel of communication risks worsening decision-making in both macroeconomic institutions. This would result in financial instability of institutions or countries, either in the UK or abroad, which would harm the economic interests of the UK.”
30. From this the Commissioner understands that the meetings between the Chancellor and Governor are an open and honest discussion about their respective outlook for the economy and monetary and fiscal policy. The meetings are regarded as confidential with a high priority placed on the ability to share sensitive information and have open discussions. HMT argue that disclosing the withheld information about this confidential channel of communication would be likely to be detrimental to both institutions decision making. The logic of this argument, which is accepted by the Commissioner, is that closing off this channel of communication or the provision of inhibited discussion and advice would result in poorer policy formulation which, in respect of economic policy, might harm the economy.
31. Regarding the first criterion of the test set out at paragraph 25, the Commissioner accepts that the type of harm that HMT believes would occur if the withheld information was disclosed is clearly applicable to section 29(1)(a). It is apparent to the Commissioner that the volatility of financial markets means that great care must be exercised when deciding what information should be placed in the public domain.
32. However, regarding the second criterion, HMT have not provided any actual evidence 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. However,

from the Commissioner's own knowledge of recent events⁷, the Commissioner is satisfied that disclosure of this information at the time the request was made clearly had the potential to harm the UK's economic interests. Disclosure about the budget or the interest rate announcement would be likely to harm the economic interests of the UK by weakening the Government's control over the economy and potentially damage economic stability and growth.

33. In reaching this conclusion, the Commissioner is influenced by the relative currency of the information requested which related to the economic forecasts for the same year in which the request was made. Had the request been submitted ten years after the forecast had been made, for example, the Commissioner would accept that risk of prejudice would be much lower.
34. In the Commissioner's view, the prejudice that would be likely to occur through disclosure would be particularly severe as the Chancellor and Governor's discussions would be likely to influence behaviour. Release of the information could also undermine people's confidence in the ability of the Government to manage the economy. This could also cause political instability.
35. The Commissioner is satisfied that, given the content of the withheld information and the sensitive subject matter to which it relates, disclosure of the information represents a real and substantial risk of prejudice to the UK's economic interests.
36. HMT was therefore entitled to engage the exemption at section 29(1)(a) of FOIA. The Commissioner will go on to consider the balance of the public interest after dealing with section 29(1)(b).

Section 29(1)(b) - prejudice to the financial interests of the government of the United Kingdom

37. Section 29(1)(b) of FOIA states that information is exempt information if its disclosure would, or would be likely to, prejudice the financial interests of the United Kingdom or any part of the United Kingdom.

⁷ <https://www.theguardian.com/commentisfree/2022/sep/25/observe-view-liz-truss-disastrous-fiscal-event>

38. The Commissioner understands that HMT considers that disclosure of the withheld information would be likely to prejudice the financial interest of the UK.
39. HMT argue that prejudice to the financial interest of the UK through damaged economic stability and growth has negative consequences on government finances through changes in the level of tax revenue and government spending. In addition, lower economic activity reduces tax revenue collected by government as spending and incomes fall.
40. The Commissioner also accepts therefore that, for the same reasoning set out above for section 29(1)(a), information relating to the 20 October 2021 meeting will potentially fall under the exemption at section 29(1)(b) and that disclosure of the information would be likely to prejudice the financial interests of the UK.
41. In the Commissioner's view, economics and finance are interrelated disciplines that inform each other. Disclosure of the withheld information just under 2 months following the 20 October 2021 meeting could lead to speculation about future interest rates decisions by the Bank of England or could be used to call into question Government cash flow and borrowing forecasts, which could increase the cost of Government borrowing. This could cause uncertainty in financial interests such as public finance, corporate finance, and personal finance. Disclosure would also have an artificial and distorting effect upon financial markets until the true figures are established. Such effects would be undesirable and would have a detrimental effect on the financial interests of the UK.
42. The Commissioner recognises that, to some extent these arguments are hypothetical and that the precise effect(s) of disclosure must be uncertain. However, disclosure of such time sensitive information, could cause any number of reactions from investors, institutions, and members of the public. There may also be other effects upon the economy which have not been touched on. The Commissioner considers that the financial markets are sensitive to even small changes in investor confidence and disclosure of the information would constitute more than just a small change in either increasing or decreasing investor confidence.
43. HMT was therefore entitled to engage the exemptions at section 29(1)(a) and (b) of FOIA. He will therefore go on to consider the balance of the public interest.

Public interest arguments

44. The section 29 exemption is subject to the public interest test. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

Public interest arguments in favour of disclosure

45. HMT recognised that there was a public interest in understanding the nature of the meetings that the Chancellor attends and discussions he has with the Bank of England to further public understanding of the issues with which he and HM Treasury deals. This includes understanding the conversation and rationale behind policy decisions made in challenging economic circumstances, which have significant consequences for the public.
46. The complainant argued that the public were living through the harshest economic circumstances in decades, and so had a pressing interest in being made aware of the conversations being had between the Government and the Bank of England on decisions that hit them in their bank account and pocket.

Public interest arguments in favour of maintaining the exemption

47. HMT argued that there was an exceptionally strong public interest in preventing the UK's economic interests from being harmed by the release of information. HMT argued that the adverse effects of releasing the information would have wide ranging repercussions on the government's ability to develop effective policies, and therefore on its ability to manage the economy and protect national and international interests. Damage to economic stability and growth would reduce living standards for people across the UK.
48. HMT argued that changes in the level of tax revenue and government spending resulting from damaged economic stability and growth reduces the space the government has to support UK businesses and households, including paying benefits, funding public services, and preparing for future economic shocks. Lower revenues would mean the government would need to either raise taxes, borrow more money, or cut spending on public services. All these options may reduce living standards or quality of life for this or future generations. This is clearly not in the public interest.
49. Further, HMT argued that the public interest in transparency is already served by the records made publicly available by HMT about the budget and by the MPC on its website. The additional public

benefit from the release of the requested information therefore does not outweigh the cost of the potential damage to economic policymaking.

The balance of the public interest

50. It is obvious that there is a strong public interest in the effective management of the UK economy. As far as disclosure would adversely affect the economy and financial interests, the Commissioner accepts that this would not be in the public interest.
51. At the same time, the Commissioner recognises, as the complainant argues and as HMT accepts in principle, disclosure may advance public debate about economic issues and allow for enhanced accountability of both the HMT and the Chancellor.
52. The Commissioner believes that there is a strong public interest in disclosure of information that would inform the public about the nature of meetings attended by the Chancellor not only to inform the public about the actions of the government, but also to potentially reassure the public of the steps being taken by the Government in respect of the UK's economic and financial interests. In the Commissioner's opinion disclosure of the withheld information would go a significant way to informing the public as to the nature of the topics discussed and debated by the Chancellor and Governor at this meeting, particularly about the predicted rise in interest rates. In the Commissioner's opinion the public interest in disclosure of this information attracts further weight considering the ongoing turbulence of the global economy and the UK's own economic difficulties.
53. However, on balance, the Commissioner's judgement is that the risk of harm to the economy through disclosure is greater than the benefits that would flow from disclosure. The Commissioner also believes that it is very clearly in the public interest to ensure that the Chancellor and Governor enjoy a relationship involving confidential discussion on their respective outlooks for the economy and policy, as this is critical for the effective development of monetary and fiscal policy. In his opinion it is overwhelmingly in the public interest to ensure that this relationship is protected to ensure that the Chancellor and Governor are able to protect their interests for the benefit of the UK as whole, particularly in times of uncertainty in the global economy. The Commissioner has therefore concluded that the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.

54. In reaching this conclusion, the Commissioner is influenced by the relative currency of the information requested which related to the interest rates for the same year in which the request was made.
55. The Commissioner has also taken into account the considerable amount of background information that HMT makes public about the economic assumptions underlying the budgetary process⁸. In addition, the Bank of England communicates its forecasts for inflation, and the minutes from the MPC's decisions on interest rates on its website⁹. These public materials provide a detailed contemporaneous rationale for the monetary policy decisions taken in the period to which this request refers. He accepts that there is some force, therefore, in the argument that the disclosure of a small amount of additional information would not contribute significantly to public debate or understanding.
56. The Commissioner has decided that at the time the request was made the public interest in disclosure was outweighed by the public interest in favour of maintaining the exemption. Accordingly, the Commissioner has found that sections 29(1)(a) and (b) of FOIA apply to the withheld information.
57. The Commissioner has not gone on to consider the applicability of sections 36(2)(c) and 40(2) considering his conclusion above that sections 29(1)(a) and (b) of FOIA apply in this case to the withheld information.

⁸ <https://www.gov.uk/government/publications/autumn-budget-and-spending-review-2021-documents>

⁹ <https://www.bankofengland.co.uk/monetary-policy>

Right of appeal

58. 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

59. 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.
60. 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

Jonathan Slee
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