

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 January 2024

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

Decision (including any steps ordered)

1. The complainant has requested information related to the income tax personal allowance taper. HM Treasury ("HMT") refused to provide it citing section 35(1)(a) (formulation/development of government policy) as its basis for doing so. It upheld this at internal review.
2. The Commissioner's decision is that HMT is entitled to rely on section 35(1)(a) as its basis for withholding the requested information.
3. The Commissioner does not require further steps.

Request and response

4. On 12 July 2023 the complainant made the following request for information under the FOIA:

"I would like to request the Treasury's latest assessment on the negative impact to net tax revenue from behavioural change due to the income tax personal allowance taper".

5. On 24 July 2023, HMT responded. It refused to provide the requested information. It cited the following exemption as its basis for doing so:
 - section 35(1)(a).
6. The complainant requested an internal review on 24 July 2023. HMT sent them the outcome of its internal review on 11 August 2023. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 11 August 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to decide whether HMT can rely on section 35(1)(a) as its basis for refusing to disclose the information it holds within the scope of the request.
9. During the course of the Commissioner's investigation, HMT also introduced reliance on section 29(1)(a) – prejudice to the economic interests of the UK or any part of it.

Reasons for decision

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

10. Section 35(1)(a) FOIA provides an exemption from the duty to disclose information to the extent that it requires the disclosure of information relating to the formulation or development of government policy. The Commissioner understands 'formulation' to broadly refer to the design of new policy, and 'development' to the process of reviewing or improving existing policy.
11. The purpose of subsection 35(1)(a) is to protect the integrity of the policymaking process, and to prevent disclosures which would undermine this process and result in less robust, well-considered policy options. The exemption is class based and so it is only necessary for the withheld information to 'relate to' the formulation or development of government policy for the exemption to be engaged – there is no need to consider its sensitivity. However, the exemption is subject to the public interest test.

12. In accordance with the Tribunal decision in *DfES v Information Commissioner and the Evening Standard* (EA/2006/0006, 19 February 2007)¹ the term 'relates to' is interpreted broadly. Any significant link between the information and the process by which government either formulates or develops its policy will be sufficient to engage the exemption.

To which Government policy or policies does the requested information relate ?

13. HMT considers that the exemption in section 35(1)(a) is engaged because there is information within the scope of the request which relates to the formulation and development of the following Government policy: Personal Allowance ("PA").
14. HMT described the PA taper as "the withdrawal of the PA for those earning over £100,000 a year. The withdrawal occurs gradually, with £1 of allowance lost for every £2 of income above the income limit of £100,000. This reduction continues until the PA is completely withdrawn for those with incomes above £125,140 in 2023-24. This creates a marginal tax rate of 60% for those earning between £100,000 and £125,140".
15. It also explained in some detail how the PA was still part of live policy development at the time of the request. The Commissioner is unable to set out this detail without disclosing the withheld information. He recognises that this may be seen as far from satisfactory from the complainant's perspective.
16. The complainant argued that "[t]he personal allowance taper has been set at the same level since 2010 and has not changed. 13 years is beyond any time frame that could be reasonably considered 'live policy'".
17. Having considered the withheld information, HMT's explanation and the complainant's argument, the Commissioner is satisfied that the information is exempt under section 35(1)(a) of the FOIA. Although the Commissioner cannot reproduce HMT's arguments here without disclosing the withheld information, he can confirm that he has taken the complainant's comment into account before reaching his conclusion.

¹ <https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i70/DFES.pdf>

18. Section 35 is a qualified exemption. The Commissioner has therefore considered the balance of public interest. This means he has considered whether the public interest favours maintaining the exemption or favours disclosure.

Public interest test

Public interest arguments in favour of disclosing the requested information

19. The complainant's key argument is that the withheld information cannot relate to live policy because the personal allowance taper has not changed in 13 years. By extension, if the matter is no longer live, the public interest in disclosure would be stronger.
20. HMT acknowledged there was a public interest in disclosure. It said:
- "We recognise that releasing this information would lead to greater transparency for the public's understanding about any behavioural impacts resulting from the PA taper. Currently the government has not released any assessment of the behavioural impacts of the PA taper. It is accepted that there is public interest in the policy."

Public interest arguments in favour of maintaining the exemption

21. The complainant did not put any public interest arguments in favour of maintaining the exemption, nor did the Commissioner expect or require them to.
22. HMT explained that the withheld information was market sensitive and provided more information to support that assertion. It described the problems that could arise where market sensitive information of this nature is released and said that the public interest favoured avoiding those problems. It also commented:
- "It is worth emphasising that tax policy is usually reserved to be announced at fiscal events".
23. It also referred to the importance of protecting a space in which policy matters could be considered in a free and frank manner.

The balance of public interest

24. In his letter to HMT, the Commissioner said:
- "The ... Tribunal has made it clear that in cases where section 35(1)(a) applies central to the consideration of the public interest test is the

timing of any request. This is because once the formulation / development of a policy has been made 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 deserves less weight. (See for example: *DFES v Information Commissioner*, EA/2006/0006 [at note 1 in this Notice]). 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."

25. The Commissioner asked HMT to provide its arguments regarding section 35 with this in mind.
26. The Commissioner thinks that the key issue in this case is the timing of the request. The complainant is understandably sceptical that this continues to be a live matter. However, the Commissioner, having seen the withheld information and having considered the full detail of HMT's arguments, is satisfied that it was still a live matter at the time of the request.
27. The Commissioner recognises that there is a weighty public interest in knowing more about government policy in this area, particularly what consideration has been given to any behavioural impacts resulting from the PA taper. He also notes that the information in question is not voluminous. He has considered whether this means that any harm that might arise from disclosure is therefore limited. However, he has concluded that, given the timing of the request, it would not be sufficiently limited as to warrant disclosure.
28. He notes that the request is specifically for "[HMT's] latest assessment". Inevitably, this relates to information that is recent. As such it is necessarily more sensitive.

Conclusion

29. The Commissioner therefore finds that the public interest in maintaining the exemption at section 35(1)(a) outweighs the public interest in disclosure at the time of the request. In reaching this view, he has had particular regard to the timing of the request.
30. Given his conclusions as regards section 35(1)(a), the Commissioner has not gone on to consider whether HMT can also rely on section 29 as its basis for withholding the same information.

Right of appeal

31. 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

32. 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.
33. 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

Alexander Ganotis
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