

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 October 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 relating to meetings between HM Treasury (HMT) ministers or officials and representatives of Copper. HMT provided some information but refused to provide the remainder citing section 35 (formulation/development of government policy), section 40 (personal data), section 43(1) (trade secrets) and section 43(2) (commercial interests). After internal review, HMT clarified the number of meetings and who had attended them. It withdrew reliance on section 35 for some information but introduced it for other information it had found within scope as a result of the complainant's clarification at internal review. It maintained reliance on section 43(1), disclosed some information it had withheld under section 43(2) and introduced reliance on section 27 (international relations) and section 29 (the economy). It disclosed further information during the course of the Commissioner's investigation but maintained reliance on section 35(1)(a), section 40(2) and sections 43(1) and (2) for the remainder and introduced reliance on section 41(1) – information provided in confidence.
2. The Commissioner's decision is that HMT is entitled to rely on the exemptions it has cited for most of the withheld information. However, he has concluded that a small section is not exempt from disclosure. The Commissioner has also concluded that HMT has accounted for all the information it holds which falls within the scope of the request.

3. The Commissioner requires HMT to take the following steps to ensure compliance with the legislation.
 - Disclose the information set out in the Confidential Annex to this Notice.
4. The public authority must take these steps within 30 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 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 10 July 2023 the complainant requested information of the following description:

“1. Have there been any meetings since October 2021 between ministers or officials from your department and those representing the cryptocurrency business Copper, which might include Philip Hammond, [Individual A], [Individual B] or [Individual C]?

2. If so, how many meetings? For the purposes of parts 1 and 2 of this request, please provide whatever details you can establish within the cost threshold using search terms.

3. Please provide any information you can share about those meetings, which might include the dates, names of those attending, briefing notes and read outs.”
6. On 15 September 2023 HMT responded. It provided some information that it held within the scope of the request but refused to provide the remainder. It cited the following exemptions as its basis for doing so: - section 35(1)(a) (formulation and development of government policy); - section 40(2) – (personal data); - section 43(1) – (trade secrets); and - section 43(2) – (prejudice to commercial interests).
7. The complainant requested an internal review on 28 September 2023. They sought clarification regarding the number of meetings. They explained they were interested in “diarised or non-diarised engagements in person, by telephone or online”. They also queried the applicability of the exemptions cited.
8. HMT sent the complainant the outcome of its internal review on 19 December 2023. It provided clarification regarding the number of meetings and who had attended them. It revised its position. It no longer relied on section 35 “following the announcement of the relevant

policy". It also pointed out that it had relied on section 35 in error in respect of some information. It however had identified new information within the scope of the request but argued that this was exempt under section 35(1)(a) and (b). It maintained its position with respect to section 40(2) although it confirmed that none of the individuals whose personal data had been withheld under section 40(2) was a representative of Copper. It maintained reliance on section 43(1) but disclosed some information that had previously been withheld under section 43(2). However, it maintained reliance on section 43(2) in respect of other information. It introduced reliance on section 27(1)(a) (international relations) and section 29(1)(a) and (b) (the economy).

Scope of the case

9. The complainant contacted the Commissioner on 30 January 2024 to complain about the way their request for information had been handled.
10. During the course of the Commissioner's investigation HMT provided the complainant with an updated position on 29 July 2024. It made a further disclosure but retained the other information it held within the scope of the request (the "remainder"). It relied upon section 35(1)(a) – government policy, section 40(2) – personal data, section 43(1) – trade secrets and section 43(2) – commercial interests as its basis for doing so. It also introduced reliance on section 41(1) – information provided in confidence.
11. In response to that disclosure, the complainant commented to the Commissioner that it was not clear whether the email of 28 January 2022 was the extent of communication exchanged between the then Economic Secretary to the Treasury (John Glen) and the then Chancellor of the Exchequer (Rt Hon Rishi Sunak) within the scope of the request. The complainant queried whether there was a response from Mr Sunak by email or other form of communication and if any exemptions had been applied to such emails or other forms of communication including the sender/recipient and subject lines of those emails as well as the content.
12. The complainant said that there was a public interest in disclosing the full contents of the correspondence which related to "and appears to have predated Mr Glen's weekend conversation with Lord Hammond¹".

¹ Lord Hammond is Phillip Hammond as he is referred to in the request. Lord Hammond, prior to his elevation to the peerage, was Chancellor of the Exchequer between July 2016 and July 2019 <https://members.parliament.uk/member/105/career>.

13. The scope of the Commissioner's investigation is to determine whether HMT is entitled to rely on the five exemptions set out in paragraph 10 as its basis for withholding the remainder. The Commissioner has also considered whether there are any other emails or other recorded communications between Mr Sunak and Mr Glen (general information about which has not already been disclosed to the complainant²). Such emails would either have predated or post-dated the email of 28 January 2022.

Reasons for decision

14. HMT set out the following information as background to this request:

"Over recent years, cryptoassets (or 'crypto') and the activities underpinning their use have evolved into an extensive and complex ecosystem. HM Treasury, along with regulators and policymakers globally, are considering how to respond to the challenges and opportunities posed by these developments.

The previous Government set out the view that the technology underpinning this innovation could bring a number of benefits for financial markets and consumers, with appropriate regulation and safeguards.

The Government and financial services regulators (including the Financial Conduct Authority (FCA)) have taken steps to bring cryptoassets into the regimes for financial promotions, and anti-money laundering and counter-terrorist financing. However, currently most cryptoasset activities, such as operating a cryptoasset exchange, are not subject to broader financial services regulation. Therefore, the Government and the regulators have been developing a set of proposals for bringing cryptoasset activities into the existing financial services regulatory framework. As part of this work, we have been actively engaging with industry and relevant stakeholders to better understand the sector and its challenges.

² The complainant received redacted copies of emails including a record showing an email dated 28 January 2022 between John Glen and Rishi Sunak which HMT titled "Item 1: Email exchange between the (then) EST [Economic Secretary to the Treasury] and CX [Chancellor of the Exchequer] – January 2022". This email showed the date and time of sending, the sender/recipient information and the subject line. The entire content was redacted under sections 35, 41 and 43. No other information was included in the part of the disclosure called "Item 1".

As is common in emerging technology markets, the crypto sector continues to experience high levels of market volatility and a number of recent failures (such as the failure of FTX, one of the largest cryptoasset exchanges, in November 2022) have exposed the structural vulnerability of some business models in the sector. The Government considers that these events have reinforced the need for timely, clear and effective regulation.

In 2022, when the information in scope was created, the then EST [Economic Secretary to the Treasury], John Glen MP, was meeting with stakeholders for discussions on the Government's approach to cryptoasset regulation. For example, HM Treasury's engagement with the firm Binance in 2022 was subject to an FOI request. HM Treasury's response to this FOI request was considered by the ICO under the reference IC-236007-C1C9³. Engagement with the firm Copper, which is the subject of the present FOI request, was one element of the wider programme of engagement being undertaken by Government Ministers and officials with the cryptoasset industry. Engagement and feedback with representatives across the industry in this way is central to economic policy decision making.

Following this, officials began formally working on the consultation paper on the future financial services regulatory regime for cryptoassets, which was published on 1 February 2023 and established a Technology Working Group of industry experts to gather further feedback. The consultation on the future financial services regulatory regime for cryptoassets is available online here:

<https://www.gov.uk/government/consultations/future-financial-services-regulatory-regime-for-cryptoassets>).⁴

Information on the Technology Working Group is available here:

<https://www.gov.uk/government/news/technology-working-group-publishes-report-on-fund-tokenisation>

As set out on GOV.UK

(<https://www.gov.uk/government/news/government-sets-out-plan-to-make-uk-a-global-cryptoasset-technology-hub>), the Government previously published plans to make the UK a global cryptoasset technology hub."

³ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4027010/ic-236007-c1c9.pdf>

⁴ The link provided by HMT was broken but the Commissioner has found a link to the (now closed) consultation on the gov.uk website

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

15. The purpose of section 35 is to protect good government. It reflects and protects some longstanding constitutional conventions of government, and preserves a safe space to consider policy options in private.
16. Section 35(1) of FOIA states that: "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
 - b) Ministerial communications.
17. The purpose of section 35(1)(a) is to protect the integrity of the policy making process, and to prevent disclosures that would undermine this process and result in less robust, well-considered or effective policies. In particular, it ensures a safe space to consider policy options in private.
18. Section 35 is class-based, meaning that a public authority does not need to consider the sensitivity of the information in order to engage the exemption. It must simply fall within the class of information described. The classes are interpreted broadly and catch a wide range of information.
19. In accordance with the Tribunal decision in *DfES v Information Commissioner and the Evening Standard* (EA/2006/0006, 19 February 2007) 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.
20. HMT said: "We consider that the exemption in section 35(1)(a) is engaged because the information within scope of the request relates to development of the Government's approach to tokenisation and blockchain technology. The government is working with external stakeholders to devise its strategy for tokenisation through the Tech Working Group, which released a blueprint for implementation in November 2023⁵".
21. As well as referring to the specifics of the withheld information to show how it related to the development of government policy it said:

⁵ <https://www.theia.org/sites/default/files/2023-11/UK%20Fund%20Tokenisation%20-%20A%20Blueprint%20for%20Implementation.pdf>

“Engagement and feedback with representatives across different industries is central to economic policy decision-making. This is because business is a crucial partner to Government in the UK’s economic policy development, and submissions from third parties provide a crucial commercial perspective on delivery of Government policy”.

22. Having read the withheld information, the Commissioner is satisfied that those parts of it to which section 35(1)(a) has been applied fall within the class of information described in that exemption. They clearly relate to the development of the Government’s approach to tokenisation and blockchain technology.

Public interest test

23. Section 35 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 outweighs the public interest in disclosing the information.
24. The Commissioner considers that the public interest arguments for maintaining section 35(1)(a) should focus on protecting the policymaking process. This reflects the purpose of the exemption.

Public interest arguments in favour of disclosure

25. In their request for internal review, the complainant said:

“The public interest is even more significant in this case given that the exempted information relates to the former head of HMT - who stands to personally benefit from Copper (in October 2022, it was reported that Lord Hammond had ‘growth shares’ worth £13m in Copper) - approaching one of his former ministers about how the UK can help Copper.

When Lord Hammond spoke to Glen [John Glen, the then EST], and when Copper met HMT officials in February 2022, Copper was seeking registration from the Financial Conduct Authority (FCA). Copper had been temporarily registered by FCA but was reportedly removed from the list on 29 June 2022. Copper withdrew its application to operate in the UK after being accepted as a member of the Swiss Financial Services Standards Association. It is not clear from the Response whether Copper discussed registration with HMT or the FCA.

There is a clear public interest in disclosing the section 35(1)(a) exempted information to promote government transparency and accountability, increase public awareness, and to add to public debate about the UK’s approach to cryptocurrencies, Copper and lobbying. Disclosing the full picture in itself has a public benefit because it may remove suspicions relating to the conduct of ministers and officials”.

26. In their letter of complaint to the Commissioner, the complainant said:

"HMT recognised various public interest considerations in the [internal] review, including transparency in the deliberations of ministers to allow for scrutiny and increased public confidence in government. These considerations are significantly increased in the circumstances, which are not properly reflected in the [internal] review. Exempted information includes correspondence between the EST and Chancellor (now Prime Minister⁶) about private lobbying by a former Chancellor with a vested interest in a cryptocurrency firm, which led to that firm getting access to HMT (and later BoE and FCA) officials and being asked how the UK could support its growth. HMT's arguments about the application of sections 29 and 35 are misplaced. This privileged and unequal access to government calls for increased scrutiny. It risks skewing decision-making towards vested interests and away from the public interest, undermining the government's ability to develop effective policies and reach well-formed conclusions".

27. HMT acknowledged general public interests in transparency and accountability. It also said:

"In this specific case, we also recognise the public interest in the Government's approach to cryptoasset regulation; in upholding confidence that HM Treasury stays in touch with developments in financial services in the UK; in providing assurance that ministers treat financial services businesses fairly; and in ensuring that money is spent correctly on maintaining contact with financial services businesses. We also recognise that Copper in particular is an innovative firm in this area".

Public interest arguments in favour of maintaining the exemption

28. HMT emphasised the importance of maintaining the safe space in which the government develops policy. It described this as "crucial for it to operate effectively as an economics and finance ministry and reach well-formed conclusions".

29. It also stressed that this was ongoing policy work and that the Commissioner had previously recognised the importance of protecting policy development at such a stage. It added that there was ongoing policymaking across the globe in relation to tokenisation "as well as live areas of government policy development on cryptoassets". It said that there were therefore "ongoing sensitivity issues that could arise".

⁶ The complaint predated the General Election of 4 July 2024

30. It challenged the complainant's assertion that Copper sought or had been granted privileged access and made specific reference to the withheld information in support of this. It also referred to work done by the EST to invite contributions from third parties. Referring to the EST's Asset Management Taskforce, it said that this had established a Technology Working Group (see paragraph 20 above). HMT said: "Through the Tech Working Group, contributions have been opened from 22 other government bodies and third parties. This also includes the trade association Innovate Finance which represents multiple FinTech firms. HM Treasury therefore do not consider that Copper sought or had been granted privileged access. Copper was a single party contributing to a wider area of policy development, other third parties have also contributed to since".
31. It argued that, on balance, the public interest favoured maintaining the exemption.

The Commissioner's decision

32. For reasons set out in the Confidential Annex to this Notice, the Commissioner has identified a small extract of information to which section 35(1)(a) has been applied but which, he has concluded, should be disclosed. In his view the balance of public interest favours disclosure in respect of that extract.
33. With respect to the remainder, the Commissioner has particular regard for the fact that this, at least at the time of the request, was an area of live policy development. In his view, the public interest in protecting the safe space in which policy is developed is particularly strong.
34. Financial services continue to be an important UK industry and there is a public interest in allowing the government safe space in which to develop policy in an emerging sub-sector of this industry.
35. The Commissioner notes the complainant's scepticism about the risk of certain parties' unfair access to government and recognises that disclosure would serve the public interest of learning more about whether one party has or has not obtained special access to government policy makers. The Commissioner has made further comment about this in the Confidential Annex to this Notice.
36. In light of the above, the Commissioner has decided that HMT is entitled to rely on section 35(1)(a) for the majority of information to which it has applied that exemption. In reaching this view, the Commissioner has had particular regard to the fact that, at the time of the request, this information was part of ongoing policy development.

37. A small part of the information to which it has applied section 35(1)(a) is not exempt under that exemption for reasons set out in the Confidential Annex.
38. HMT noted that although section 35(1)(b) would apply to the information as well (Ministerial communications), it no longer sought to rely on it because it was not the most relevant exemption in section 35(1). The Commissioner has therefore not considered section 35(1)(b) further. Had HMT made arguments for its use of section 35(1)(b), the Commissioner would have considered them.

Section 40 – personal information

39. 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.
40. In this case the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
41. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
42. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.
43. In practical terms, the Commissioner looks at whether there is a legitimate interest in disclosure. If there is, he will look at whether disclosure is necessary to serve that interest or whether it can be served in a less intrusive way. If there is a legitimate interest and it cannot be served in a less intrusive way, he will balance that legitimate interest in disclosure against the individual in question's interests or fundamental rights and freedoms. He will look at what the individual's reasonable expectations are about how their personal data will be used and what unwarranted harm or distress disclosure may cause.
44. HMT applied section 40 to the names of junior officials, the email addresses of named senior officials, a group email address and some individuals involved in email correspondence who were not government employees. The Commissioner will address the latter group later in this section but he will first address the application of section 40 to any public sector employees whose personal data is included in the withheld

information. In doing so, the Commissioner has had regard to his own published guidance which sets out the detail of how section 40 can apply to the personal data of public authority employees.⁷ He also had regard for his general guidance on the application of section 40 which sets out the general factors he must consider which looking at the application of this exemption.⁸

Junior officials

45. The Commissioner has made determinations on this matter in many previous decisions, two⁹ of which are referenced below. These illustrate the tests he applies when considering section 40(2) with respect to the personal data of junior officials, which he has therefore not repeated here. The Commissioner is satisfied that HMT is entitled to rely on section 40(2) as its basis for withholding the names and contact details of junior officials. The Commissioner notes that the information contains the personal data of junior officials from more than one public authority.

Contact details of senior officials

46. HMT argued that senior officials “would not reasonably expect their email addresses or other contact information to be made known. The release of this personal data is not necessary or justified and would create a significant privacy impact”.
47. The Commissioner agrees that the legitimate interest in knowing which senior officials were involved in the correspondence is served by the disclosure of those officials’ names, which HMT has already done. He does not consider that disclosure of their contact details is also necessary to serve that legitimate interest.

HMT group email address

48. In its arguments around reliance on section 40, HMT also withheld an HMT group email address. It argued that this email address is comprised of individual HMT email addresses and that releasing this email address would, in effect release the email addresses of HMT officials. It did not

⁷ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

⁸ <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-regulation-13.pdf>

⁹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2024/4029469/ic-262866-j1n5.pdf>
<https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4024465/ic-174200-p5g0.pdf>

explain how releasing the group email address would lead to the identification of the email addresses of named individuals or the named individuals themselves. While recognising the importance of protecting HMT email addresses from inappropriate levels of contact, the group email address in question is not personal data – no living individuals are identifiable from it. As such, section 40 cannot apply to it on its own.

Copper employees

49. HMT also withheld the names and contact details of employees at Copper and the contact details of Dmitry Tokarev, Chief Executive Officer at Copper.
50. The Commissioner is satisfied that there is a legitimate interest in knowing that HMT had correspondence with Copper at the highest level of that company. This interest served by disclosing the name of Copper's CEO as part of the disclosure of correspondence with that company. Disclosure of other employee names or the contact details of any of Copper's employees is not necessary to serve this interest.

Conclusion

51. Aside from the group email address, all of the information which HMT has withheld under section 40 is exempt from disclosure on the basis of that exemption. The group email address is not personal data and therefore section 40 cannot apply to it. HMT did not apply another exemption to it; therefore it should be disclosed.

Section 41 – information provided in confidence

52. Information is exempt from disclosure if it was obtained by the public authority from any other person and the disclosure of the information to the public would constitute a breach of confidence actionable by that or any other person.
53. For reasons set out in the Confidential Annex to this Notice, the Commissioner has concluded that a small extract of the withheld information is not exempt under section 41. The Commissioner's reasoning and the information itself are set out in that Annex.
54. The remainder of the withheld information which has been exempted under section 41 is contained in a single email.
55. The Commissioner is satisfied this information is information obtained from another person. He is unable to set out on the face of this Notice what this information is without disclosing it. He has made more detailed reference to it in the Confidential Annex.

56. When determining whether disclosure would constitute an actionable breach of confidence it is necessary to consider whether the information has the necessary quality of confidence and whether it was imparted in circumstances importing an obligation of confidence. Then, it is necessary to consider whether disclosure would be an unauthorised use of the information to the detriment of the confider.
57. The Commissioner is satisfied that the withheld information is information that has the necessary quality of confidence. It is not trivial or otherwise accessible to the general public.
58. The Commissioner also considers that it is information imparted in circumstances importing an obligation of confidence and that unauthorised use of the information would be detrimental to the confider. The confider would not expect information imparted in such circumstances to be disclosed under FOIA.
59. A public authority can defend itself against an action for a breach of confidence if it can establish a public interest defence – that the breach of confidence was necessary in the public interest. The Commissioner is not satisfied that such a defence would be viable here particularly given the strong public interest in protecting confidences.
60. The Commissioner is therefore satisfied that it would be an actionable breach of confidence for HMT to disclose most of the information to which section 41 has been applied. That information which is not exempt under section 41 is set out in the Confidential Annex to this Notice.

Section 43(1) – trade secret and section 43(2) – prejudice to commercial interests

61. Section 43(1) and (2) of FOIA state:
62. '(1) Information is exempt information if it constitutes a trade secret.
(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).'

Section 43(1) - Trade secret

63. HMT identified which information was, in its view, a trade secret and therefore exempt under section 43(1). Having read the information the Commissioner is satisfied that it constitutes a trade secret. He does not propose to set out a description of it on the face of this notice because that would reveal what it is.

64. HMT also supplied detailed submissions from Copper explaining why, in its view, disclosure would be prejudicial to its commercial interest and which information was likely to constitute a trade secret.

Section 43(2) – prejudice to commercial interests

65. HMT said:

“We consider that the exemption in section 43(2) is engaged because some of the information would be likely to prejudice the commercial interests of the companies concerned. This is because the information sets out, in a level of detail that is not publicly available, Copper’s current product suite”. It then provided comment with specific reference to the withheld information.

66. In order for a prejudice based exemption, such as section 43(2), to be engaged the Commissioner considers that three criteria must be met:

- Firstly, 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;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the harm in disclosing 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; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure ‘would be likely’ to result in prejudice or disclosure ‘would’ result in prejudice.

67. 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. With regard to 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.

68. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the HMT relates to the interests which the exemption contained at section 43(2) is designed to protect.

69. With regard to the second criterion, the Commissioner is satisfied from the evidence provided by HMT, particularly the submissions supplied from Copper, that the information can reasonably be considered to be commercially sensitive to the company in question. The Commissioner

therefore accepts that there is a causal link between disclosure of the information and prejudice such that the second criterion is met.

70. In respect of the third criterion, having considered the evidence provided, the Commissioner is prepared to accept that there is more than a hypothetical likelihood of such prejudice occurring. Copper operates in a fast developing market and, as such, it is reasonable for it to be extremely careful about disclosing the detail of its product and business model. The third limb of this criterion is therefore met and the information in question is exempt from disclosure on the basis of section 43(2) of FOIA.

Public interest test

71. Section 43 is a qualified exemption and in line with the requirements of section 2 of FOIA the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemption cited outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

72. HMT said:

"[W]e recognise that the inherent public interest in transparency and accountability of public authorities as well as furthering public understanding of the issues which public authorities deal with. In this specific case, as stated above, we also recognise the public interest in the Government's approach to cryptoasset regulation and in upholding confidence that HM Treasury stays in touch with developments in financial services in the UK. We also recognise that Copper in particular is an innovative firm in this area."

73. The complainant raised concerns they have about HMT relying on and protecting a narrow channel of information from one company and also raised concerns about how lobbying might have been carried out. They were concerned about privileged access that, in their view, other businesses would not have. They said "Greater transparency could lead to HMT in future to obtain a wider range of views and make more informed decisions".

74. The complainant, with respect to section 43(1), said that:

"the proposal was provided in circumstances that give rise to a significantly heightened case for transparency and accountability. The assertion in the Response, that section 43(1) has been engaged to ensure that Copper is "able to compete fairly" ignores the fact that Copper obtained privileged access to HMT and a competitive advantage, which inhibits fair competition by other companies".

75. They disputed whether disclosure would, as asserted by HMT, inhibit Copper's future engagement with government departments because, in their view, Copper had been given "privileged access to HMT and a competitive advantage, which inhibits fair competition by other companies".

Public interest arguments in favour of maintaining the exemption

76. HMT said:

"HM Treasury relies on information provided by a range of stakeholders to better understand the impact of economic policy proposals on different sectors. We consider that the disclosure of information that is likely to have a negative impact on the commercial interests of particular companies would be likely to inhibit, not only, their future engagement with the department, but also, the future engagement of other companies. If HM Treasury were to release commercially sensitive information and therefore deter stakeholders from future engagement with HM Treasury, this could negatively impact policy development by limiting the range of views that officials can consider. This would not be in the public interest."

77. It also made specific comment with respect to Copper and referred to its consultation with Copper in support of its position. Given that this commentary makes specific reference to the withheld information, the Commissioner does not propose to set it out on the face of this notice.

Balance of the public interest arguments

78. The Commissioner recognises that there is strong public interest in ensuring that HMT is transparent and accountable in respect of the dealings it has with commercial enterprises. This is particularly the case where a leading figure in the commercial enterprise is a former Chancellor of the Exchequer. This does not, however, mean that HMT should disregard its obligations to protect commercial sensitivities. In the circumstances of this particular case there is, in the Commissioner's view, a stronger public interest in protecting commercially sensitive information (including trade secrets) than there is in disclosing that commercially sensitive information.
79. In conclusion, and taking into account the above considerations, the Commissioner has concluded that the public interest favours maintaining section 43(1) and section 43(2)

Procedural matters

80. The complainant queried whether there was further information within the scope of the request which he had not been made aware of.
81. The complainant was particularly concerned about the timeline of communications between Copper and the UK government and made the following observations:

“It would be helpful to have clarification about whether there is other relevant correspondence. An HMT email dated 01/02/22 said the EST spoke to Lord Hammond (shareholder and then adviser to Copper) over the weekend and wanted to meet Copper asap, which the internal review characterises as “not a meeting”. Two weeks later, HMT officials met Copper. The email from the EST to the Chancellor was sent before the weekend. The internal review notes that it contains information from an external party but does not elaborate. If the EST spoke to Hammond after contacting the Chancellor, it appears that the call was scheduled and no record taken. Either way, it indicates that official government business was discussed.”
82. The Commissioner acknowledges that the complainant is at a disadvantage because they do not know what is contained in the withheld information.
83. As indicated in Note 2, HMT’s disclosure was of a number of records (mostly emails) which were divided into groups. These groups were headed “Item [number]: [description]”. Each item contained one or more email disclosed in whole or in part.
84. HMT explained the searches it had undertaken to locate information within the scope of the request. It explained the date ranges and search terms it had used. It also explained where it had looked and what its records management policy was with respect to information of this nature.
85. Following the position consistently taken by the First-tier Tribunal (Information Rights), the Commissioner considers questions of whether information is held or not held to the civil standard, that is, on the balance of probabilities. HMT’s searches appear reasonable and sufficiently thorough.
86. Supplemental to these general questions, the Commissioner specifically asked HMT about the number of items that fell into the category of “Item 1: Email exchange between the (then) EST and CX – January 2022” (see Note 2). HMT confirmed that “there was no exchange of emails that would fall within the scope of the request. It was one single item”.

87. Based on this statement and HMT's description of the searches it undertook to find information within the scope of the request (see paragraph 84 above), the Commissioner is satisfied that, on the balance of probabilities, no further information is held within the scope of the request.

Right of appeal

88. 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

89. 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.

90. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF