ico. Information Commissioner's Office

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **29 May 2014**

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

Decision (including any steps ordered)

1. The complainant requested from HM Treasury a copy of the report into the review of the programme to replace Trident conducted by its Major Projects Review Group ("MPRG"). HM Treasury, after a very lengthy delay, provided a small amount of information and withheld the remainder under the exemptions in sections 26, 27, 33, 35, 36 and 43(2) of FOIA. During the course of the Commissioner's investigation, HM Treasury changed its position. It confirmed that it did not in fact hold, at the time that the request was made, any information falling within the scope of the request.

2. The Commissioner's decision is that HM Treasury has breached section 1(1)(a) by not informing the complainant that it did not hold any information falling within the scope of his request at the time that it was made. It also breached section 10(1) by not complying with section 1(1) within 20 working days of receipt of the request. However, the Commissioner does not require HM Treasury to take any further steps to ensure compliance with the legislation.

Request and response

3. On 29 April 2011, the complainant wrote to HM Treasury and requested the following information:

> *"A copy of the report into the review of the programme to replace Trident (and other elements of the Ministry of Defence's*

strategic deterrent programme) conducted by the Treasury's Major Projects Review Group, together with an annexes. This report is mentioned in the National Audit Office report 'Ministry of Defence: The United Kingdom's Future Nuclear Deterrent Capability' (report by the Comptroller and Auditor General, HC 1115 Session 2007-2008, 5 November 2008. Box 7, page 22).

If the review of this project has not yet concluded, I should be grateful if you would advise me of the reasons for this and inform me when it is expected to be completed, and provide me with a copy of the report when the review has concluded."

4. On 25 June 2012, having received no response to his request, after sending a number of follow up letters, the complainant requested that HM Treasury carry out an internal review. After receiving no response to this, the complainant contacted the Commissioner on 14 November 2012.

5. Following the Commissioner's intervention, on 19 December 2012, the complainant received a substantive response from HM Treasury. He was provided with a small amount of the information. HM Treasury informed him that the remainder of the information he had requested had been withheld under sections 26, 27, 35 and 43(2).

6. The complainant requested an internal review of HM Treasury's decision on 20 December 2012. HM Treasury sent him the outcome of its internal review on 19 February 2013. It upheld its original position and confirmed that it was additionally relying on the exemptions in sections 33 and 36 as a basis for withholding the information.

Scope of the case

7. The complainant contacted the Commissioner on 31 March 2013 to complain about the way his request for information had been handled. His initial complaint related to HM Treasury's application of exemptions to the withheld information and the delay in its initial response to his request

8. During the course of the Commissioner's investigation, he was informed by HM Treasury that the information which it had identified in its response to the complainant did not actually fall within the scope of the complainant's request and that it did not in fact hold any information falling within the scope of the request at the time that it was made. In light of the complainant accepting that HM Treasury held no information falling within the scope of his request when it was made, the Commissioner considered in this notice procedural breaches of FOIA by

HM Treasury related to its failure to inform the complainant when he made his request that it held no relevant information and the delay in providing an initial response to him.

Reasons for decision

General right of access and time for compliance – sections 1 and 10

9. Section 1(1) provides that -

> *"Any person making a request for information to a public authority is entitled –*
>
> *(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
>
> *(b) if that is the case, to have that information communicated to him."*

10. As previously noted, during the course of the Commissioner's investigation, he was informed by HM Treasury that, having reviewed the information on which it had based its response to the complainant, it had concluded that this information did not actually fall within the scope of the complainant's request and that it held no information at the time of the request that fell within its scope.

11. The Commissioner has determined that by not informing the complainant at the time the request was made that it did not hold any information falling within the scope of his request, HM Treasury breached section 1(1)(a).

12. In addition, the complainant made his request on 29 April 2011 but did not receive a response to his request until 19 December 2012, and then only following the involvement of the Commissioner. The Commissioner has determined that HM Treasury has breached section 10(1) by not complying with section 1(1) within 20 working days of receipt of the request.

13. However, in the circumstances of this case, the Commissioner does not require HM Treasury to take any further steps to ensure compliance with the legislation.

Other matters

14. The Commissioner notes that it took HM Treasury over 19 months to provide the complainant with a response to his request, despite him repeatedly chasing a response and only after the intervention of the Commissioner.

15. HM Treasury informed the Commissioner that it accepted that the delay in dealing with this request was unacceptable. It explained that the delay was due to a combination of factors including a 43% increase in the number of requests around the time of this request which coincided with a series of staff changes. It went on to inform the Commissioner that its Information Rights team is now fully staffed and robust systems are in place to identify and monitor progress on all requests. (By way of illustration, it pointed to the fact that 96% of its FOI cases were dealt with within the statutory deadline in 2013).

16. The Commissioner notes that HM Treasury, in its internal review response, did apologise to the complainant for the delay and acknowledged that it was unacceptable. It went on to provide an explanation to the complainant for the delay in terms of it being partly due to the information relating to a difficult area which needed lengthy consideration of the public interest test and also the pressures on its FOI team.

17. Whilst the Commissioner appreciates that some of the information under consideration is likely to have been of a sensitive nature, he cannot accept, as HM Treasury itself acknowledges, that there can be any excuse for the sort of delays encountered by the complainant in this case. The Commissioner notes that HM Treasury has explained that its Information Rights team is now fully staffed and that it has put in place robust systems to monitor progress on all requests that it receives. As a result, he expects not to see any delays in future which are even remotely similar in length to the ones that occurred in relation to the handling of this request.

18. The Commissioner is also concerned that, despite the very length time taken by HM Treasury to consider this request, it was only during the course of his investigation that it became apparent that the information upon which HM Treasury had based its responses did not fall within the precise scope of the complainant's request and that it did not in fact hold any information falling within the scope of the request at the time that the request was made.

19. HM Treasury informed the Commissioner that it accepted that it should have been clearer to the requester about the nature of the information held. It explained that, in relation to the request for 'a report' the request appeared to envisage the MPRG process as a one-off review, with a report into the programme published as a result of this review. In

fact, MPRG scrutiny is an ongoing assurance process which generally covers the full duration of the project, with regular panel discussions with the programme team. HM Treasury went on to explain that these discussions do not produce reports. It also noted that the NAO report referred to by the complainant did not refer to HM Treasury producing a report.

20. The Commissioner was informed by HM Treasury that its response to the complainant focussed on information provided to the MPRG panel that was most recent to his request. This was the latest information identified by the department that reported on the progress of the programme. HM Treasury explained that, while this was not 'a report', this information did provide the most recent information about the MPRG's review of the programme.

21. The Commissioner notes that had HM Treasury made clear at the outset when the request was made that it did not hold any information falling within the scope of the request, this would have saved a considerable amount of the complainant's, the Commissioner's and HM Treasury's own time in dealing with this matter. In addition, the Commissioner believes that it would then have been able to provide the complainant with advice and assistance under section 16. This may have enabled him to make a new request which clearly encompassed the information upon which HM Treasury based its responses, which was information provided to the MPRG panel, or to make a new request for other closely related information.

22. In future the Commissioner would expect HM Treasury to make sure that it reviews requests carefully in order to determine whether it holds any information falling within the scope of the request and to make the position very clear to requesters in order to avoid the sort of problems that have occurred in relation to this case.

23. Finally, as the Commissioner has acknowledges above, some of the information considered by HM Treasury in this case is likely to have been of a sensitive nature. He therefore understands why it may have been necessary for HM Treasury to consult at length with the Ministry of Defence before providing responses to the complainant and to his own enquiries during the course of his investigation. However, in addition to the delays faced by the complainant, the Commissioner notes that there were considerable delays in responses to his enquiries which he understands were due in large part to the time taken over consultations with the Ministry of Defence. The Commissioner expects that HM Treasury, if it has not done so already, will put in place processes which will ensure that consultations, such as the ones required in this case, are completed much more quickly in future.

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Right of appeal

24. 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: 0300 1234504
    Fax: 0116 249 4253
    Email: GRC@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.

26. 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 ……

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF