

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 March 2013

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

Decision (including any steps ordered)

1. The complainant submitted a request to HM Treasury (the Treasury) for information relating to the Chancellor's attendance at the 'Bilderberg' conference in 2011. The Treasury provided details of the costs associated with the trip and initially withheld further information on the basis of the exemptions contained at the following sections of FOIA: section 27 (international relations), section 29 (the economy) and section 35 (government policy). The Treasury subsequently concluded that this information was in fact outside the scope of the complainant's request. The Commissioner has concluded that this information does in fact fall within the scope of the request albeit that it can be withheld from disclosure on the basis of either section 27 or section 29 of FOIA.

Request and response

2. On 13 June 2011 the complainant submitted the following request to the Treasury:

'I am emailing with a request for information under the Freedom of Information Act 2000.'

On the weekend of June 9th 2011, Mr George Osborne MP and Chancellor of the Exchequer attended the Bilderberg Conference in St Moritz, Switzerland. The Treasury's press office confirmed his attendance by stating,

"Mr Osborne is attending in his official capacity as Chancellor of the Exchequer along with other international finance ministers."

Bilderbergs own website states that these meetings are,

"...a small, flexible, informal and off-the-record international forum..."

Seeing as the British media failed to cover the Chancellors official meeting and what was discussed, I request any and all information regarding this meeting, the topics it covered and who paid for Mr Osbornes trip.¹

3. The Treasury responded on 12 July 2011 and provided some of the costs associated with the meeting. However, the Treasury explained that the remaining details of the costs associated with the Chancellor's trip were withheld on the basis of section 22 of FOIA. The response went on to explain that the information it held relating to the Chancellor's discussions was exempt from disclosure on the basis of sections 29(1)(a), 27(1)(b), 27(1)(c) and 35(1)(a) of FOIA. (The Treasury explained that it could not reveal its detailed arguments which supported the application of these exemptions because to do so would in itself result in the disclosure of exempt information.)
4. The complainant contacted the Treasury on 1 September 2011 in order to ask for an internal review of the application of all of these exemptions.
5. The Treasury informed the complainant of the outcome of the internal review on 2 May 2012. This response provided further details of the costs associated with the trip. The response also explained that the remaining information that was continuing to be withheld consisted of a number of briefings which were designed as background information for the Chancellor on topics of international interest at the time and also a 'read out' of some bilateral meetings. However, the Treasury explained that it remained of the view that this information was exempt from disclosure by virtue of sections 35(1)(a) – and in the alternative section 36(2)(b)(i) - sections 27(1)(a) and 27(1)(b), and section 29(1)(a) of FOIA.

¹ Bilderberg is an informal and off-the-record international forum attended by politicians and business people from around the world who come together to discuss topics of international significance to international policy makers. Further details are available on the organiser's website: <http://www.bilderbergmeetings.org/index.html>

Scope of the case

6. The complainant contacted the Commissioner 9 July 2012 to complain about the way his request for information had been handled. The complainant disputed the Treasury's decision to withhold the information on the basis of the various exemptions cited in the internal review, in particular the application of section 35(1)(a). The complainant explained that he was also wished to complain about the Treasury's delays in completing the internal review of his request.
7. During the course of the Commissioner's investigation the Treasury explained that it was now of the opinion that the information that it had previously withheld did not in fact fall within the scope of this request and thus it had in fact disclosed all of the information that it held and which it believed fell within the scope of the request. Having discussed this issue with both the complainant, and the Treasury, the Commissioner reached the view that the information withheld at the internal review stage did in fact fall within the scope of the request.
8. The Commissioner has set out in his analysis below why he has reached this conclusion before going on to consider whether the information itself is exempt from disclosure. The Treasury has explained that without prejudice to its position that the information is not in fact in the scope of the request, it believes that all of the information withheld at the internal review is exempt from disclosure on the basis of section 35(1)(a); all but one of the documents are exempt from disclosure on the basis of one of the sub-sections of section 27(1); and all but one of the documents are exempt from the disclosure on the basis of section 29(1)(a).
9. The Commissioner wishes to stress at this point that the level of analysis he is able to include in this notice regarding the Treasury's reliance on these exemptions is limited. This is because it is difficult to fully explain why the Treasury believes that these exemptions are applicable without referring to the content of the withheld information itself.
10. With regard to the complainant's concerns about the time taken to conduct the internal review, the Commissioner cannot consider matters associated with the conduct of internal reviews in a decision notice because such matters are not a formal requirement of FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA. However, the Commissioner has commented on the complainant's concerns regarding the Treasury's conduct of the internal review in the Other Matters section at the end of this notice.

Reasons for decision

Section 1 – the interpretation of the request

11. As noted above, during the course of the Commissioner's investigation the Treasury explained that it had reached the conclusion that the information that it had withheld at the internal review stage did not in fact fall within the scope of the request. Its rationale for reaching this position is summarised below.
12. The Treasury noted that the request had sought:

'any and all information regarding this meeting [i.e. the Bilderberg conference held on the weekend of 9 June 2011], the topics it covered and who paid for Mr Osborne's trip'.
13. The Treasury explained that Ministers are, as matter of routine, provided with briefings on key topical issues in preparation for events where high ranking officials will be in attendance and Ministers anticipate that there will be an opportunity for discussion. Although the Chancellor was provided with briefing notes prior to the Bilderberg meeting (i.e. the information that the Treasury had previously applied exemptions to at the internal review stage), such briefings would have been provided to the Chancellor in relation to *any* event where other senior figures were expected to attend.
14. The Treasury explained that these briefing notes do not relate to the Bilderberg meeting itself. Therefore, as the request simply sought information about the Bilderberg meeting, the Treasury was of the view that the briefing notes previously withheld were not actually in the scope of the request. The Treasury did accept that information relating to briefings provided to the Chancellor about topics on the agenda of the Bilderberg conference itself, if held, would fall within the scope of the request. However, it explained that no such information was in fact held.
15. For his part, the complainant explained to the Commissioner that he did not agree with the Treasury's revised interpretation of his request. Instead he explained that he intended his request to be interpreted more broadly, and he noted more in line with the Treasury's original interpretation of his request, so that it covered *any* and *all* information relating to the Chancellor's attendance at the Bilderberg meeting in 2011.
16. In the Commissioner's opinion when it is established that a request can be read objectively in two ways then the public authority will have a duty in relation to section 1 of FOIA in relation to both readings of the request. Section 1 of FOIA states that subject to the application of an

exemption, a public authority must confirm to a requestor whether or not it holds the information they have requested and if so, disclose the information that has been requested. Although the Commissioner can understand the rationale behind the Treasury's view that it does not hold any further information falling within the scope of this request, he is also of the opinion that the complainant's broader interpretation of his request is also an objective reading of the request.

17. Therefore, in the Commissioner's opinion the information which the Treasury withheld at the internal review stage does fall within the scope of the complainant's request. That is to say, a number of briefings which were designed as background information for the Chancellor on topics of international interest at the time and a read out of some bi-lateral meetings.

Section 27 – international relations

18. Section 27(1) states that:

'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) relations between the United Kingdom and any other State,*
- (b) relations between the United Kingdom and any international organisation or international court*
- (c) the interests of the United Kingdom abroad'*

19. In order for a prejudice based exemption, such as section 27(1), to be engaged the Commissioner believes 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 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; and
- Thirdly, 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.

20. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested that, in the context of section 27(1), prejudice can be real and of substance 'if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary'.²

The Treasury's position

21. The Treasury argued that all of the documents which comprised the withheld information, with the exception of document number 11 on the schedule of information provided to the Commissioner by the Treasury, were exempt from disclosure on the basis of one or more of the exemptions contained at sections 27(1)(a) to (c). In summary, the Treasury explained that it considered these exemptions to be engaged because they contained advice on other countries' economies, or contained matters discussed at private meetings. Release of such information would be likely to prejudice the UK's relations both with other countries (section 27(1)(a)) and international organisations (section 27(1)(b)). Furthermore, disclosure of such information would also be likely to prejudice the UK's ability to participate in confidential discussions with world leaders in the future and thus undermine the UK's ability to promote its interests abroad (section 27(1)(c)). For each of these sub-sections of the section 27(1), the Treasury provided clear examples of how such prejudice would be likely to arise with reference to the content of each of the documents which had been withheld. The Commissioner cannot set out the Treasury's submissions to him in any greater detail than this without beginning to reveal the content of the withheld information itself.

The Commissioner's position

22. With regard to the first criterion of the test set out at paragraph 19, the Commissioner accepts that the types of harm that the Treasury believes would be likely to occur if the information was disclosed is applicable to each of the various exemptions contained at sections 27(1)(a) to (c).
23. With regard to the second criterion, having considered the content of the withheld information the Commissioner is satisfied that disclosure of this information clearly has the potential to harm the UK's relationships with other states and international organisations in the manner envisaged by the Treasury. The Commissioner is also satisfied that given the

² [Campaign Against the Arms Trade v The Information Commissioner and Ministry of Defence \(EA/2006/0040\)](#), paragraph 81.

consequences of such a disclosure, he accepts that there is some causal link between disclosure of the information and the UK's ability to promote its interests abroad in the future.

24. The Commissioner is therefore satisfied that there is a causal link between the potential disclosure of the withheld information and the interests which sections 27(1)(a) to (c) are designed to protect. Moreover, the Commissioner is satisfied that the resultant prejudice which the Treasury believes would be likely to occur is one that can be correctly categorised, in light of the Tribunal's comments above, as real and of substance. In other words, subject to meeting the likelihood test at the third criterion, disclosure could result in making relations more difficult and/or demand a particular diplomatic response.
25. In relation to the third criterion, the Commissioner has been guided on the interpretation of the phrase 'would, or would be likely to' by a number of Tribunal decisions. He believes that for the lower level of likelihood, i.e. 'likely', to be met the chance of prejudice occurring should be more than a hypothetical possibility; there must have been a real and significant risk. With regard to the alternative limb of 'would prejudice' the Commissioner believes that this places a stronger evidential burden on the public authority to discharge.
26. Having considered the content of the withheld information, the Commissioner is satisfied that disclosure of this information represents a real and substantial risk of prejudice occurring to the interests set out at sections 27(1)(a) to (c). This is because of the free and frank nature of the information itself allied to the fact that the Chancellor, in addition to other senior UK figures, will of course, continue to discuss matters relating to the UK, European and world economy with international partners. In the Commissioner's opinion disclosure of the information falling within the scope of this request would be likely to impact on the UK's relationships with these parties, both states and international organisations, and furthermore as a consequence would be likely to harm the UK's interests which are dependent upon the UK enjoying positive international relationships.

Public interest test

27. Section 27 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemptions contained at sections 27(1)(a) to (c) outweigh the public interest in disclosing the information. Although there are three separate exemptions, given the similarity of the public interest arguments relevant to each exemption the Commissioner has considered the public interest arguments together.

Public interest arguments in favour of disclosing the information

28. The Treasury recognised that there was a public interest in understanding the nature of the meetings that the Chancellor attends and discussions he has and in this case disclosure would reassure the public that the UK is well represented on the international stage. It also recognised the fact that there is little written about the Bilderberg meetings by the organisers and that this makes the nature of the meetings more intriguing. The Treasury also acknowledged that there is a public interest in knowing that value for money is obtained from Ministerial trips and that FOIA ensures greater access to government information.
29. For his part, the complainant argued that although the Bilderberg Group claimed to be a 'forum for discussion where no policy statements are issued and no resolutions proposed' it remained a highly undemocratic organisation. For example, how did the public know that no policies were being formulated behind closed doors at Bilderberg conferences? Moreover, the complainant argued that even if it was accepted that participants at the Bilderberg conference were not formulating government policy, how could the public know whether matters discussed at the meetings were not 'influencing' policy of any given government? In support of his line of argument, the complainant referred to comments made by David Cameron regarding 'greater transparency [being] at the heart of shared commitment to enable the public to hold politicians and public bodies to account'.³

Public interest arguments in favour of maintaining the exemptions

30. The Treasury argued that there is a very strong public interest in ensuring that the UK's relations with its international partners are not prejudiced not least because this ensures that the UK's interests are not harmed. The Treasury emphasised that in the context of the ongoing turbulence in the global economy and uncertainty in the eurozone, it was vital for the government to be able to continue to work closely with its international partners.

Balance of the public interest test

31. 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 as the Treasury notes, to

³ <http://www.bbc.co.uk/news/10195808>

potentially reassure the public of the steps being taken by the government in respect of the UK's economic 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 at this particular meeting. (The Commissioner recognises that simply because a briefing was included for the Chancellor on a particular topic, this does not necessarily mean that he discussed that topic with other attendees at Bilderberg in 2011, although the Commissioner notes that the withheld information also includes a read-out of some bilateral meetings that the Chancellor did have at the conference.) In the Commissioner's opinion the public interest in disclosure of this information attracts further weight in light of the ongoing turbulence of the global economy and the UK's own economic difficulties. To a lesser extent, the Commissioner also recognises that the concerns that some have raised regarding the secret nature of the Bilderberg conferences arguably adds some further weight to the public interest in disclosure as it would inform, and possibly reassure, the public about the Chancellor's attendance at the 2011 conference.

32. However, the Commissioner believes that it is very clearly in the public interest to ensure that the UK enjoys strong relationships with key international partners. In his opinion it is overwhelmingly in the public interest to ensure to that the UK protects such relationships in order to ensure that it is in a position to protect its 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 each of the exemptions outweighs the public interest in disclosure of the information.

Section 29

33. The Treasury has withheld all but one document (numbered document 9 in the schedule provided to the Commissioner) on the basis of the section 29(1)(a) of FOIA. As the Commissioner has already concluded that all of the documents, with the exception of document 11, are already exempt from disclosure on the basis of one or more sections 27(1)(a) to (c), he has simply considered whether document 11 is exempt from disclosure on the basis of section 29(1)(a).
34. This exemption, like section 27(1), is also a prejudice based exemption and states that:

'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 any part of the United Kingdom'*

The Treasury's position

35. The Treasury has explained that disclosure of the information withheld under this exemption would be likely to undermine the UK's economic interests because it would release details of the UK's negotiating strategy and disclose the content of sensitive discussions that would undermine the Chancellor's ability to achieve outcomes that support UK economic interests. In respect of document 11 the Treasury provided a direct explanation demonstrating how this prejudice would be likely to occur with reference to the content of the document itself.

The Commissioner's position

36. With regard to the first criterion of the test set out at paragraph 19, the Commissioner accepts that the type of harm that the Treasury believes would occur if document 11 was disclosed is clearly applicable to section 29(1)(a). With regard to the second criterion, the Commissioner is also satisfied that disclosure of this information clearly has the potential to harm the UK's economic interests in the manner described by the Treasury. The Commissioner is also satisfied that given the consequences of such a disclosure that there is some causal link between disclosure of the information and the UK's economic interests. Finally, the Commissioner is satisfied that given the content of the withheld information and the subject matter to which it relates, disclosure of document 11 represents a real and substantial risk of prejudice to the UK's economic interests. The Commissioner is therefore satisfied that document 11 is exempt from disclosure on the basis of section 29(1)(a) of FOIA.

Public interest test

37. Section 29 is also a qualified exemption and therefore the Commissioner must consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the requested information

38. The Commissioner believes that the public interest arguments in favour of disclosure are effectively the same as those set out above in relation to section 27 and therefore he has not replicated them here.

Public interest arguments in favour of maintaining the exemption

39. The Treasury argued that it was clearly not in the public interest to release information that would be likely to prejudice the UK's economic interests.

Balance of public interest arguments

40. As discussed above, the Commissioner believes that there is strong public interest in disclosure of information which would inform the public about matters the Chancellor discussed with world leaders on topics affecting the UK economy. Similarly, as with the information considered under section 27, disclosure of document 11 would in the Commissioner's opinion clearly serve this public interest. However, the Commissioner agrees with the Treasury that significant weight should be attributed to the arguments in favour of maintaining section 29(1)(a) in order to ensure that the UK's economic interests are protected, and that this argument attracts particular weight in light of the specific arguments that the Treasury has advanced in relation to the content of document 11. The Commissioner has therefore concluded that the public interest in maintaining section 29(1)(a) outweighs the public interest in the disclosure of the information.
41. In light of his findings in relation to sections 27 and 29, the Commissioner has not considered the Treasury's reliance on section 35(1)(a).

Other matters

42. As the Commissioner has explained in the main body of this notice, there is no statutory time limit for completing internal reviews. However, the Commissioner has issued guidance in which he has stated that in his view internal reviews should take no longer than 20 working days to complete and even in exceptional circumstances the total time taken should not exceed 40 working days. In this case the Treasury took 170 working days to complete the internal review. The Commissioner expects the Treasury to ensure that the internal reviews it handles in the future adhere to the timescales he has set out in his guidance.

Right of appeal

43. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

44. 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.
45. 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

Steve Wood
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF