

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 23 February 2021

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

Decision (including any steps ordered)

1. The complainant requested copies of correspondence between the former Chancellor of the Exchequer, The RT Hon Lord Hammond of Runnymede Philip Hammond and Treasury officials on the cost of reducing greenhouse gas emissions to Net Zero in the UK. The public authority withheld the information held within the scope of the request relying on the exception in regulation 12(4)(e) EIR.
2. The Commissioner's decision is that the public authority was entitled to rely on the exception in regulation 12(4)(e) EIR. The Commissioner however finds the public authority in breach of 11(4) EIR for failing to complete its internal review within 40 working days.
3. No steps required.

Request

4. The complainant submitted the following request to the public authority on 12 June 2019:

“This request concerns the recent FT article concerning a letter from Phillip Hammond to Theresa May warning that her plan to reduce greenhouse gas emissions to net zero by 2050 will cost the UK over £1tn.”

The request:

Please provide any **correspondence or meetings** between

- Phillip Hammond

And any of the following

- Duncan McCourt
- Stefan Ball
- Tim Pitt
- Poppy Trowbridge
- Giles Winn
- Kane Daniell
- Edward Hadley

Where the meetings or correspondence have focused on the cost of reducing greenhouse gas emissions to net zero in the UK

I am looking for information between 01 May 2019 and 05 June 2019.

For any meeting, could I be supplied with the:

- Date/Location
- Names and titles of the people in attendance
- Agendas/Minutes/Briefing notes etc

Similarly, for each item of correspondence, to include but not be limited to, telephone calls, emails or text messages, could I be supplied with the:

- Time/Date
- Names and titles of other people party to the correspondence

- Any attachments to emails or supplementary documents included
- Any associated documents generated as a direct result of this conversation e.g. briefing notes, minutes, memos, transcripts or summaries...

If you are unable to release certain records because the requested information is caught by one or more exceptions, please provide a register of all information in the scope of the request, including that which is being withheld. Please provide the date and description of each record and indicate which exception is cited to withhold it from disclosure...

I would like to receive the information in an electronic format. Where the information is held in a database I wish to receive it in .xls or .csv format..."

5. The public authority responded on 8 July 2019. It confirmed that it held information within the scope of the request which it considered exempt from disclosure on the basis of the exception in regulation 12(4)(e) EIR.
6. The complainant requested an internal review of this decision on 9 July 2019.
7. On 12 November 2019 the public authority wrote back to the complainant with details of the outcome of the internal review. It upheld the application of the exception in regulation 12(4)(e) and explained that a register of "all information in the scope of the request" had not been compiled and therefore could not be provided, and would in any event be equally exempt by virtue of the exception in regulation 12(4)(e).

Scope of the case

8. The complaint was submitted on 4 December 2019.
9. The complainant has restricted the scope of his complaint to the public authority's decision to withhold the information held within the scope of his request (the disputed information). The complainant has not sought to also challenge the public authority's decision regarding the request for a register of the information in scope.

10. The Commissioner's investigation considered whether the public authority was entitled to withhold the disputed information on the basis of the exception in regulation 12(4)(e) EIR.

Reasons for decision

The disputed information

11. The disputed information is contained in 19 emails which were primarily between officials acting on behalf of the former Chancellor of the Exchequer, The RT Hon Lord Hammond of Runnymede Philip Hammond and, the Head of Climate Change branch at HM Treasury. The majority of the emails were copied to Treasury officials including some of the officials mentioned in the complainant's request.

Applicable access legislation

12. There is no dispute between the parties regarding the applicable information access regime in this case. The Commissioner is satisfied in any event that the disputed information constitutes environmental information within the meaning of regulation 2(1)(c) EIR¹. The Commissioner considers that the disputed information relates to measures likely to affect the state of the elements. The public authority was therefore entitled to handle the complainant's request of 12 June 2019 under the EIR.

Application of Regulation 12(4)(e)

13. Regulation 12(4)(e) states:

"A public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications."²

Complainant's submissions

¹ <https://www.legislation.gov.uk/ukxi/2004/3391/regulation/2>

² <https://www.legislation.gov.uk/ukxi/2004/3391/regulation/12>

14. The complainant's submissions in support of disclosing the disputed information are summarised below³.
15. Little weight should be attached to the public interest in maintaining a safe space for discussions because the Prime Minister has said that plans to create a Net Zero carbon economy would cost no more than the UK's existing plans to reduce greenhouse gas emissions and drew a line underneath the letter provided by the Chancellor, committing to net zero UK carbon emissions by 2050.
16. Arguments focusing on a generalised chilling effect on all future discussions are akin to arguments focusing on policy formulation and development as a 'seamless web' which have been rejected by the Information Tribunal.
17. Climate change and the UK's climate change policy is an issue of urgent national and international significance, it is of critical importance that information concerning it is accessible.

Public authority's submissions

18. The public authority's submissions in supporting of withholding the disputed information are summarised below.
19. The public authority initially provided the background information below to give some context to its position.
20. In October 2018 the governments of the UK, Wales and Scotland asked the Committee on Climate Change (CCC) for an update to advice on UK climate action. The CCC recommended that the UK should set a target of Net Zero greenhouse gas emissions by 2050. There were separate targets for Scotland and Wales (Net Zero by 2045 and 95% reduction by 2050 respectively). The CCC also recommended that the Treasury undertake a review of the funding of the transition. The Prime Minister accepted the Net Zero recommendation in June 2019 which was then legislated for. In November 2019 the Treasury published terms of reference for its review into how the transition to a Net Zero economy will be funded and where the costs will fall. The review will examine how to ensure contributions are fair between households, businesses and the taxpayer and will allow the UK to maximise economic growth opportunities from the transition. The outcome of the review is expected to be published in 2021.

³ These submissions were originally included in the complainant's request to the public authority.

21. With respect to the application of the exception, the public authority explained that the disputed information comprises of emails within HM Treasury which contain information from within the department, the Department for Business, Innovation and Skills and the CCC. All of the emails were circulated within HM Treasury and therefore constitute internal HM Treasury communications within the meaning of regulation 12(4)(e) EIR.
22. With respect to the balance of the public interest, the public authority acknowledged that there is an inherent public interest in transparency and accountability of public authorities. It acknowledged the broad public interest in furthering public understanding of the issues which public authorities handle. More specifically, it recognised that there is a public interest in being transparent and open in the work of government departments concerning environmental matters and in particular around the Net Zero emissions target. It argued however that there is a large amount of published information relating to the Net Zero emissions policy⁴ including the CCC's cost estimates on Net Zero emissions⁵ which goes some way to meeting the public interest in disclosing the disputed information. Furthermore, the CCC provides independent expert advice to Government on climate change mitigation and adaptation and produces an annual report to Parliament assessing progress in reducing UK emissions. Therefore, the public interest in disclosing the disputed information is mitigated by the transparency and accountability afforded by the ongoing work of the reviews, Committees and inquiries mentioned above.
23. In favour of maintaining the exception, the public authority argued that disclosing the disputed information would undermine the safe space for policy officials and Ministers to develop ideas, debate live issues and reach decisions on Net Zero emissions away from external interference and distraction. When the request was submitted in June 2019, the Treasury was committed to publishing a review into the costs of meeting

⁴ The Government's response in September 2019 to the Twenty-first report of session by the Business, Energy and Industrial Strategy Committee in July 2019 titled; 'Energy efficiency: building towards Net Zero' (HC 1730).
<https://publications.parliament.uk/pa/cm201919/cmselect/cmbeis/124/12402.htm>

On 5 June 2019, the Treasury Select Committee inquiry into the decarbonisation of the UK economy and green finance. <https://committees.parliament.uk/work/96/decarbonisation-and-green-finance/news/115103/decarbonisation-of-the-uk-economy-and-green-finance-inquiry-relaunched/>

⁵ <https://www.theccc.org.uk/publication/net-zero-the-uks-contribution-to-stopping-global-warming/>

Net Zero emissions and how they fall. There were discussions in the Treasury in relation to what the Net Zero review would deliver, its scope and its internal structures. Disclosure would have undermined the Government's policy development process as these ideas were still being developed.

24. The review was formally launched on 2 November 2019 and is ongoing⁶. Disclosing the disputed information would create expectations around the outcome of the review and would prevent an examination of the full range of options. A safe space is necessary to facilitate policy development and for agreement to be reached on how the Government would implement the CCC'S recommendation. The consequence otherwise would be less robust and ineffective policies. It is important to preserve a safe space for discussions given the sensitivities around Net Zero. Disclosing the disputed information would have a negligible effect on promoting transparency given how much information is already in the public domain. In addition, the public interest would be most effectively and responsibly served by waiting until the conclusion of the Treasury review into the costs of Net Zero in order to present the Government's full assessment of the costs and a detailed consideration of where the costs of transition would fall.
25. Concluding, the public authority submitted that there were similarities between this case and complaint FER0869949 against the Department for Business, Innovation and Skills (DBEIS) which was resolved informally by the ICO⁷. The public authority pointed out that the ICO agreed with BEIS in that case that although there is an important public interest in transparency and accountability for the Government's decision to legislate for the 2050 Net Zero target, disclosing the information requested in the case would not be in the public interest.

The Commissioner's considerations

Is the exception engaged?

26. The Commissioner first considered whether the disputed information engages the exception in regulation 12(4)(e).

⁶ The Commissioner understands that the review was ongoing at the time of the request and remained the case when the public authority provided its submissions in support of this case on 4 November 2020.

⁷ The request in that case was for a copy of BEIS' "analysis on the cost of meeting the 2050 net zero emissions target." The case was resolved informally on 13 February 2020 upholding the application of Regulation 12(4)(e).

27. The Commissioner considers that the term “internal communication” within the meaning of regulation 12(4)(e) refers to a communication that stays within one public authority. Communications between central government departments are expressly included as internal communications by virtue of regulation 12(8) EIR. However, communications can still be internal even if they record discussions with third parties or contain information received from third parties. For example, a note of a meeting with a third party, created and circulated within a public authority for its own use, is still an internal communication. It is the form of the communication that is important, rather than its content. This means that the context and wording of a request can affect whether the exception is engaged. If a document only falls within the scope of a request because it was attached to an internal communication, the request “involves the disclosure of internal communications” and in these circumstances the exception will be engaged for both the internal communication and the attachment.
28. The Commissioner is satisfied that the 19 emails which constitute the disputed information are internal communications within the meaning of the exception in regulation 12(4)(e). The emails were circulated within HM Treasury. The public authority was therefore entitled to engage the exception as the basis for withholding the disputed information.

Balance of the public interest

29. The exceptions from the duty to disclose information under the EIR are subject to the public interest test set out in regulation 12(1)(b) EIR. The Commissioner therefore considered whether in all the circumstances of the case, the public interest in maintaining the exception in regulation 12(4)(e) outweighs the public interest in disclosing the disputed information.
30. Regulation 12(2) of the EIR⁸ requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. According to the Upper Tribunal, “If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure...” and “the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced

⁸ <http://www.legislation.gov.uk/uksi/2004/3391/regulation/12/made>

and (2) to inform any decision that may be taken under the regulations”⁹.

31. The crux of the public authority’s argument is that the disputed information should not be released while the Treasury review (which was launched on 2 November 2019 and is expected to report in 2021) into how the transition to a Net Zero economy will be funded and where the costs will fall is ongoing. The complainant is not persuaded. He considers the public authority’s position similar to the view rejected by both the Commissioner and a number of Information Tribunals¹⁰ that policy review and development should be regarded as a continuous process or a “seamless web” in approaching the question of when policy formulation or development is considered complete (the “seamless web” argument).
32. In determining which of these opposing views should carry greater weight, the Commissioner reminded herself of the wording of the request; “Please provide any correspondence or meetings between Phillip Hammond and [Treasury officials] where the meetings or correspondence have focused on the cost of reducing greenhouse gas emissions to net zero in the UK. I am looking for information between 01 May 2019 and 05 June 2019....”
33. The Commissioner considers that any correspondence or meetings which focussed on the costs of reducing greenhouse gas emissions to Net Zero is likely to be relevant to an ongoing review into how the transition to a Net Zero economy will be funded and where the costs will fall. Discussions focussed on the costs of reducing greenhouse gas emissions to Net Zero in line with the CCC’s recommendation constitute the vast majority of the disputed information.
34. The Commissioner does not share the view that discussions in relation to the costs of funding the transition to a Net Zero economy had concluded at the time of his request. Otherwise, the Government would not have launched a review on 2 November 2019 into how the transition to a Net Zero economy will be funded and where the costs will fall. Indeed, in addition to recommending Net Zero greenhouse gas emissions by 2050, the CCC had recommended that the Treasury

⁹ Vesco v Information Commissioner (SGIA/44/2019) at paragraph 19.

¹⁰ For example, DfES v Information Commissioner & the Evening Standard (EA/2006/0006) at paragraph 75(v).

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

undertake a review of the funding of the transition to Net Zero emissions.

35. Therefore, the Commissioner has not attached significant weight to the “seamless web” argument in the circumstances of this case. The question of how the transition to a Net Zero economy will be funded and where the costs will fall did not appear to have been settled at the time of the request. In the Commissioner’s view therefore, discussions in relation to funding the transition including as part of the Treasury review is not merely a continuous review of the broader Government policy on reducing greenhouse gas emissions which has been legislated for. Funding the transition to Net Zero emissions is an important policy issue within that broader framework that is yet to be finalised.
36. The Commissioner considers that disclosing the disputed information which she has carefully considered is likely to have a chilling effect on discussions relating to funding the transition to a Net Zero economy including as part of the Treasury review. Civil servants should not be easily deterred from giving impartial and robust advice by the possibility of future disclosure. However, the possibility of a chilling effect on discussions in relation to funding the transition to a Net Zero economy should not be disregarded. Disclosing the disputed information while discussions between officials were ongoing on this very sensitive issue is likely to inhibit free and frank discussions between officials on the subject in the future for fear that their views could be published prematurely. The loss of frankness and candour would be damaging to the quality of advice from officials in relation to funding the transition to a Net Zero economy. There is a strong public interest in preventing this outcome not least because it would lead to poor decision-making.
37. Equally significant is the public interest in protecting the public authority’s private thinking space. The Commissioner is satisfied that when the request was submitted in June 2019, the public authority was considering a review in relation to the costs of funding the transition to a Net Zero economy in line with the CCC’s recommendations. Whilst not entirely focussed on the nature of the review, the disputed information includes discussions relating to the review. In addition, as the Commissioner has noted, there is no clear indication that discussions in relation to the cost of funding the transition to a Net Zero economy had concluded. Therefore, the Commissioner is persuaded that there was a strong public interest in protecting the private thinking space for officials to consider all options in relation to funding the transition to a Net Zero economy. The Commissioner considers that external interference in those discussions, which given the sensitivity of the subject matter was likely, would have become a source of distraction uncondusive to a robust consideration of all options by officials.

38. The Commissioner shares the view that climate change and the UK's climate change policy is an issue of national and international significance and it is important that information concerning same is accessible. The Commissioner does not share the view that disclosing the disputed information would have a negligible effect on promoting transparency given how much information is already in the public domain. Information in the link relating to the Treasury Select Committee inquiry into the decarbonisation of the UK economy and green finance appears to have been updated in July 2020 and therefore post-dates the request which was submitted on 12 June 2019. The Government's response to the Twenty-first report of session by the Business, Energy and Industrial Strategy Committee was published in September 2019¹¹. However, following the Upper Tribunal ruling in *APPGER v ICO and Foreign and Commonwealth Office*¹², the public authority was entitled to take this publication into account in its assessment of the balance of the public interest.
39. More pertinently, the public interest in disclosing discussions between senior officials and the Chancellor's office regarding how the transition to a Net Zero economy could be funded should not be underestimated. Having obtained an unauthorised copy of a letter from Philip Hammond to Theresa May, the Financial Times commented on 5 June 2019 that the former Chancellor of the Exchequer was concerned about the costs of funding the Net Zero emissions target recommended by the CCC¹³. On such an important issue, the disputed information would provide the public with better insight on the nature of HM Treasury's deliberations in relation to funding the transition to a Net Zero economy. Moreover, there is a presumption in favour of disclosing environmental information.
40. In determining where the balance of the public interest lies, the Commissioner asked herself whether the public would be best served by disclosing the disputed information before the Treasury review is complete. In the circumstances, the Commissioner considers that the public interest in transparency and accountability would be better served by waiting until the Treasury review is complete so that the public can have access to the most detailed and finalised information on the costs of funding the transition to a Net Zero economy and where they would

¹¹ Links to the both publications provided at paragraph 22 above.

¹² (UKUT) 0377 (ACC), 2 July 2015. The Upper Tribunal endorsed the view that the public interest should be assessed by reference to the circumstances at or around the time the request was considered by the public authority including the time of any internal review.

¹³ <https://www.ft.com/content/036a5596-87a7-11e9-a028-86cea8523dc2>

fall. The Commissioner's conclusion therefore is that on balance, the factors in favour of the public interest in maintaining the exception outweigh those in favour of the public interest in disclosing the disputed information.

41. The Commissioner's view is that the balance of the public interest favours maintaining the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(e) was applied correctly.

Procedural Matters

42. By virtue of regulation 11(4) EIR, a public authority is required to complete its internal review as soon as possible and no later than 40 working days after the internal review is requested.
43. The Commissioner finds the public authority in breach of regulation 11(4) EIR for taking approximately 89 working days to complete its internal review.

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: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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.....

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