

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 June 2022

Public Authority: Government Internal Audit Agency

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

Decision (including any steps ordered)

1. The complainant requested from the Government Internal Audit Agency (GIAA) three audit reports regarding an audit of the Committee on Climate Change. The GIAA responded to the request refusing to disclose the requested information under section 33 of FOIA, the audit functions exemption.
2. The Commissioner's decision is that the GIAA has correctly applied section 33 of FOIA to the request and the public interest in favour of disclosure is outweighed by the public interest in maintaining the exemption.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 26 March 2021, the complainant wrote to the GIAA and requested information in the following terms:

"Please can you provide me with the findings of the latest 3 audit reports of the Committee on Climate Change? Please provide these documents in their entirety, including any relevant annexes and attachments. If you have any queries or require any clarification please let me know as soon as possible. Please provide me with as much of the above as you're able, if you're not able to fulfil this request entirely."

5. The GIAA responded on 23 April 2021. It refused to provide the requested information, citing exemptions under sections 33, 21 (information accessible by other means) and 22 (future publication) of FOIA.
6. Following an internal review the GIAA wrote to the complainant on 28 May 2021. It revised its position to cite the exemption under section 33, audit functions, as the sole reason for refusing to provide all of the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 4 June 2021 to complain about the way their request for information had been handled.
8. During the course of his investigation the Commissioner considered whether the information requested would meet the definition of environmental information under the Environmental Information Regulations 2004 (EIR). Having reviewed the withheld information he is satisfied that the information requested does not meet the definition under regulation 2(1) of the EIR and that the GIAA was therefore correct to consider the request for information under FOIA. The three reports cover the Committee on Climate Change's key financial controls, recruitment and retention, and stakeholder management.
9. The following analysis focuses on whether the exemption at section 33 of FOIA was cited correctly.

Reasons for decision

Section 33 – audit functions

10. Section 33(1)(b) of FOIA states that the exemption applies to any public authority which has functions in relation to the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.
11. Section 33(1) should be read in conjunction with section 33(2) of FOIA. This provides that information is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).

Audit function of the GIAA

12. The first step is to establish whether the GIAA has the audit functions described in section 33(1)(b) of the FOIA.
13. The Commissioner is satisfied that the GIAA clearly has a relevant audit function in relation to the examination of the economy, efficiency and effectiveness of how public authorities use their resources. The GIAA is the government's primary provider of internal audit services. Its mission is "to provide objective insight so that central government can achieve better outcomes and value for money for the public".
14. The Commissioner now needs to consider whether disclosure of the requested information would or would be likely to prejudice the audit functions performed by the GIAA.

The causal relationship

15. The GIAA argues that disclosure of the audit reports would be likely to prejudice the exercise of its functions as it would substantially inhibit unrestrained, frank and candid exchange with customer officials during the conduct of audits, and inhibit the willingness of customer senior managers to fully engage with and support the internal audit process going forward.

The likelihood of the prejudice occurring

16. The GIAA argues that a disclosure of the information 'would be likely' to cause the prejudice it had foreseen. The Commissioner therefore considers that the chance of prejudice occurring must meet the requirement of being a real and significant risk in order for him to find the exemption engaged.
17. The Commissioner accepts the GIAA's reasoning set above as to how if the reports were disclosed there would be a real and significant risk of prejudice to the GIAA's ability to carry out effective audits in the future.

The Commissioner's conclusions

18. The Commissioner has decided that the GIAA is correct in that section 33 is engaged by the withheld information. He must therefore go on to consider the public interest test required by section 2 of the FOIA.

The public interest

19. The test, as set out in section 2(2)(b), is whether "in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information".

The public interest in the disclosure of the information

20. The GIAA acknowledges that there is an inherent public interest in transparency in its work and in the efficiency and effectiveness with which GIAA customers use their resources in discharging their functions.
21. The Commissioner also considers that, in addition to the wider public interest in transparency regarding the effectiveness of government departments in general, there is a strong public interest in transparency around the effectiveness of the Committee on Climate Change given current and potential future impact of climate change on the public.

The public interest in the exemption being maintained

22. The GIAA argues that there is a strong public interest in maintaining an independent and objective Internal Audit service and that this is essential to provide the requisite assurance over the adequacy and effectiveness of risk management, control and governance within its customers.
23. It argues that this public interest in the exemption being maintained outweighs the public interest in the disclosure of the information as described above.

The Commissioner's analysis

24. The Commissioner recognises that there is a strong public interest in the disclosure of information regarding the effectiveness of government departments in general and the Committee on Climate Change in particular.
25. That said, the GIAA's arguments are also very strong in identifying likely issues which would arise from a disclosure of the withheld information. These issues would be likely to affect its ability to carry out effective audits in the future as disclosure of these reports would be likely to strongly discourage other government departments from co-operating fully and in a candid manner in future audits as they would be aware the information may be disclosed to the world at large.
26. The public interest in maintaining the GIAA's ability to carry out audits effectively and therefore assure and improve government departments' outcomes and value for money for the public is significant.
27. For this reason, the Commissioner's decision is that the public interest in the exemption being maintained outweighs that in the information being disclosed on this occasion. The GIAA was not, therefore, obliged to disclose the requested information.

Right of appeal

28. 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

29. 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.
30. 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

Ben Tomes
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SK9 5AF