

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 May 2023

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

Decision (including any steps ordered)

1. The complainant has requested information from HM Treasury ("HMT") regarding the cost to the taxpayer from the 10 year deal with Moderna. HMT withheld the information, citing section 43(2) of FOIA – commercial interests.
2. The Commissioner's decision is that the withheld information engages section 43(2) and that the public interest lies in maintaining the exemption.
3. The Commissioner does not requires any steps to be taken as a result of this decision notice.

Request and response

4. On 27 January 2023, the complainant wrote to HMT and requested information in the following terms:

"I am submitting a freedom of information act request to find out the cost to the tax payer of the 10 year deal with Moderna. I have requested details from my local MP [named person], after a few messages he has now declined to help.

Please could you inform me what the cost to the taxpayer of the 10 year partnership with Moderna."

5. HMT responded on 21 February 2023. It stated that it does hold information within the scope of the request, but it is withholding the information, citing section 43(2) of FOIA – commercial interests.
6. Following an internal review HMT wrote to the complainant on 22 March 2023. It stated that it upheld its original response.

Scope of the case

7. The complainant contacted the Commissioner on 11 April 2023, to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of this complaint is to determine if section 43(2) is engaged for the UKHSA to withhold the requested information.
9. HMT set out in both its original response and the internal review why it considered the information should be withheld under section 43(2). The Commissioner has decided that he has sufficient information to reach a decision in this case, based on the information provided and his own expertise, without seeking further arguments from HMT.

Reasons for decision

Section 43(2) – commercial interests

10. Section 43(2) of FOIA states:

“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.”

11. It is a qualified exemption. So in addition to demonstrating that disclosure would or would be likely to prejudice the commercial interests of the public authority and/or a third party, the public authority must consider the public interest test. It must weigh up the public interest arguments in favour of disclosure against the public interest arguments in favour of maintaining the exemption. It then needs to demonstrate that the balance of the public interest test rests in maintaining the exemption.
12. HMT has explained that if the information were disclosed, it would prejudice Moderna’s ongoing commercial negotiations with other entities.

13. HMT has also argued that if the information were to be released, it might undermine the negotiating position of the government in any future negotiations on contracts of this type, as there would be a lack of confidence in the confidentiality of the agreement.
14. Having considered the arguments provided by HMT, the Commissioner is satisfied that there is a causal link that exists between disclosure and commercial prejudice towards both Moderna and HMT. As such, the Commissioner's decision is that HMT was entitled to apply section 43(2) to the withheld information, and he will go on to consider the associated public interest test.

Public interest test

Arguments for disclosure

15. The complainant has argued that the government releases financial details of upgrading such things as the armed forces, building railway lines, building roads and many other deals that it has negotiated, without the need to withhold the information.
16. The complainant has advised that they consider it in the public interest to see how much public money is used to support Moderna paying its shareholders.
17. The complainant has explained that there are many universities, which are already publicly funded, that could do much of the development work.
18. HMT has explained that it recognises that there is a public interest in knowing that the government is achieving value for money and that commercial activities are conducted in an open and honest way.

Arguments in favour of maintaining the exemption

19. HMT has argued that there is a strong public interest in protecting the government's ability to conduct effective commercial negotiations with third-parties.
20. HMT explained that it considers that there is a strong public interest in not undermining the government's ability to negotiate contracts with third-parties by ensuring that commercially sensitive information is not released.
21. HMT has argued that the potential for sensitive information being released could dissuade commercial entities from engaging with the government in the future.

22. HMT has explained that should the information be released and third-parties dissuaded from engaging, it could lead to contracts that are not as favourable to the public purse as they otherwise might have been.
23. HMT has also argued that should these specific details be released, it would prejudice Moderna's ongoing commercial negotiations with other entities.

Commissioner's Decision

24. In considering where the balance of the public interest lies, the Commissioner recognises the complainant's concerns regarding the costs and how the public purse is spent.
25. However, the Commissioner is also mindful that government bodies should be able to procure necessary products and services efficiently and effectively.
26. The Commissioner has considered the public interest arguments accepts that disclosure would help to increase openness and transparency. However, given the level of likelihood of commercial harm that would occur should the information be disclosed, the Commissioner finds that the balance of the public interest favours maintaining section 43(2) of FOIA.
27. Having considered the relevant facts, the Commissioner has concluded that, in this case, the public interest favours maintaining the application of section 43(2).

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: 0203 936 8963

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

Michael Lea
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