

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 June 2013

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

#### Decision (including any steps ordered)

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1. The complainant has requested from HM Treasury ("the Treasury") information that it held related to the central forecasts contained in the Bank of England's Inflation Report published in February 2012. The Treasury withheld the information under sections 29(1) (prejudice to economic and financial interests of the United Kingdom) and 35(1) (formulation of government policy).
2. The Commissioner's decision is that the Treasury has correctly applied section 29(1) to the withheld information and therefore does not require it to take any further steps to ensure compliance with the legislation.

#### Request and response

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3. On 27 April 2012 the complainant made the following request for information under FOIA:

*"I am aware that the Treasury is likely to hold information relating to the Bank of England's quarterly economic forecasts and the detailed components of the BoE's central forecasts. I am interested in this information.*

*Specifically, I would like to receive*

*i) documents held at the Treasury which include the details of the BoE's central forecasts that were published in the February 2012 Inflation Report.*

*ii) These should include GDP and its components, employment and labour market forecasts, estimates of the output gap, forecasts for productivity and details of the inflation forecasts and its components."*

4. The Treasury responded on 29 May 2012 and refused to provide the requested information citing the exemptions in sections 29(1) and 35(1)(a) of FOIA.
5. The complainant requested an internal review on 29 May 2012. The Treasury provided the outcome of its internal review on 11 September 2012 in which it maintained its original position.

### **Scope of the case**

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6. The complainant initially contacted the Commissioner on 31 August 2012 to complain about the delay in the Treasury providing a response to his request for internal review. After receiving a response from the Treasury, he made a further complaint on 2 November 2012 about its failure to provide him with the information that he had requested.
7. The Commissioner considered whether the Treasury was entitled to rely on sections 29(1) and 35(1) as a basis for refusing to provide the information that the complainant requested.

### **Reasons for decision**

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8. The Treasury argued that the withheld information was exempt from disclosure under sections 29(1)(a) and (b) and 35(1)(a). The Commissioner initially considered whether the information was exempt under section 29.

### **Section 29 – The economy**

9. Section 29(1) of FOIA states that:

*"(1) 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 of any part of the United Kingdom, or*
- (b) the financial interests of any administration in the United Kingdom, as defined by section 28(2)."*

10. Section 28(2) defines "*administration in the United Kingdom*" as including the government of the United Kingdom ("UK").

### **The Treasury's arguments**

11. The Treasury informed the Commissioner that it had sought the views of the Bank of England ("the Bank") on the potential impact of the release of the requested information as it was information that had been produced by the Bank.
12. By way of background, the Treasury said that it believed that the information that had been requested would be protected in the hands of the Bank under its monetary policy exclusion in Part VI of Schedule 1 of the Act. It explained that this exclusion was motivated in part by the recognition that the Bank of England Act 1998 already provides a specific disclosure regime by the Bank in relation to information relating to monetary policy. One element of this regime, under section 18, is the requirement on the Bank to publish a quarterly *Inflation Report*. The Treasury stated that the information requested underpins and informs this Report but is not disclosed in the *Inflation Report* in the degree of detail requested by the complainant.
13. The Treasury informed the Commissioner that it was of the view that section 29(1)(a) and (b) was engaged as release of the withheld information would be likely to impact on markets, if released without relevant explanation.
14. The Treasury explained that global financial markets remain fragile and the release of information by key policy makers has the potential to affect market confidence and impact on the readiness of internal and external investors to invest funds into the UK economy. It was of the view that, given the focus on any communication relating to monetary policy by financial market participants, the release of the information held, without further explanatory commentary, has the potential to lead to market speculation. This would be likely to have a destabilising effect on the financial markets and thus have a prejudicial effect on the economic interests of all or part of the UK. In this way release would also be likely to have a detrimental impact on the financial interests of the Government. The Treasury stated that, as set out in the 2012 Autumn Statement, a 1 percentage point rise in bond yields would add around £7.8 billion to annual debt interest payments. A 1 percentage point rise in effective mortgage rates would add around £12 billion to total mortgage payments.
15. The Treasury believed that the potential market reaction to releases relating to monetary policy was underlined by the release of the recent February 2013 *Inflation Report* that immediately caused:

- (i) up to a 6 basis points increase in yields;
- (ii) heightened futures trading activity; and
- (iii) 0.74 per cent weakening in sterling relative to the US dollar.

16. These movements were in response to information provided with considerable contextual information. Absent of that context, reactions could be larger and more volatile given the greater risk of misinterpretation and subsequent reinterpretation by market participants.
17. The Treasury explained that nominal gilt yields rose by 10 basis points on the day of the *Inflation Report* being published. Higher inflation expectations and perceived lower probability of further quantitative easing were thought to be the main drivers of the market movements.

### **Communication of monetary policy and the MPC's reaction function**

18. The Commissioner was informed by the Treasury that there is a significant body of literature which demonstrates that considered communication is itself a vital tool for increasing the efficacy and reliability of monetary policy. The Bank therefore has a structured and carefully managed communication policy. The decision to withhold the information requested therefore reflects the position that the Bank/the Bank of England's Monetary Policy Committee ("MPC") have decided not to make this degree of detail public in their *Inflation Report*.
19. The Treasury explained that the importance of communication for the effectiveness of monetary policy rests on the fact that conventional monetary policy measures themselves influence only current short-term interest rates. The success of monetary policy to a very large extent depends on the degree to which it can affect expectations about future developments, for instance, the expected rate of inflation and the expected path of future short-term interest rates. The key aspect in this respect is the anchoring of inflation expectations at levels consistent with price stability.
20. The Treasury was of the view that communication and transparency therefore have to be structured in a way that helps achieve this primary objective. Consequently, monetary policy communication has to balance carefully the respective benefits and costs for the purposes of effectiveness and credibility. The Treasury referred to published research which it argued made clear that poorly designed or executed communication can do more harm than good. It also made reference to the view of a former MPC member, Richard Lambert, in 2004 that it "*is not just an ability to make the right decision at the right time. In order*

*to manage expectations of interest rates and inflation, those decisions need to be put into context and explained in a way that is rational and consistent.” (Lambert, R 2004 “Boring Bankers – Should We Listen”)*

21. Against this background, the Treasury contended that releasing information that the MPC have decided not to publish may risk undermining the work of the MPC in preparing the quarterly *Inflation Report*, which is a carefully considered medium for influencing expectations about future rates of inflation, economic growth and monetary policy.

### **The impact of release**

22. The Treasury argued that the release of information produced by the Bank inevitably has an impact on the markets and it is important that release is carried out in a planned and structured way. In this case, although the information in question is now a year old, it would be wrong to assume that release at this point in time would be without effect.
23. In considering the likely prejudice of releasing information that might provide the public with something extra about the MPC’s current thinking, the Treasury believed that it was important to bear in mind the kind of context which the Bank normally provides when it publishes a forecast for a variable such as gross domestic product (“GDP”) and inflation. This includes:
  - extensive commentary on the projection, based in the MPC’s discussions of the outlook for that variable;
  - a clear guide to whose view the forecast represents, which in the case of the fan charts for GDP and inflation is the best collective judgment of the MPC; and
  - a discussion of the risks around this projection on the same basis as the previous two bullets.
24. If one of the underlying forecasts that have been requested were released without this context, it would not be apparent whose forecast it was (in any given forecast round, the MPC are likely to see and comment on forecasts for some variables, while others will be rendered consistent with those which the MPC do express a view on, and ultimately the fan charts, by the Bank’s staff).
25. The Treasury also believed that there are wider potential detrimental consequences which might flow from this. Financial market participants make trades on the basis of their expectations of how the MPC will set policy in the future. And it is this path for expected future policy rates (the ‘yield curve’ or ‘market interest rate curve’) which contributes

materially to monetary conditions in the economy, rather than the level of Bank Rate per se. Households and companies borrow for much longer periods than overnight, which is the period to which Bank Rate set by the MPC applies, and so the rates they pay are in one way or another typically priced as a function of expected future policy interest rates over the duration of their loan. The expected path of interest rates can be affected by misperceptions and confusion about the MPC's views and intentions with large effects on households and companies today.

26. In the Treasury's view, this did not mean that it is undesirable for factors other than deliberate MPC communications (such as the *Inflation Report* and MPC minutes) to affect the yield curve. But releasing the underlying forecasts without this context risks confusing people about the MPC's reaction function, by confusing them about where the MPC believed the economy was going back in February 2012, and therefore changing the perceived context of past policy decisions. The Treasury believed that this is not conducive to the MPC best being able to achieve price stability, which is favoured by widespread understanding of how policymakers will behave in different circumstances in order to affect expectations, and which in the long run is the key contribution monetary policy can make to growth.
27. In summary, the Treasury argued that any misinterpretation by markets would affect households and companies via interest rates and related activity, while those misperceptions would be very likely absent of appropriate context.

### **The difficulties of providing contextual information to support release**

28. The Treasury explained that it was aware that the ICO had provided advice, in its guidance on the application of the public interest test, about information which (if released on its own) may be misunderstood or misleading. The guidance indicates that this is not ordinarily a good reason not to disclose the information and takes the line that it would usually be open to the authority to provide appropriate context or explanation with the information which it releases. The guidance does, however, acknowledge that the misunderstanding/misleading argument would carry weight, if it was not possible to provide the context/explanation.
29. The Treasury went on to argue that, as the information requested is not information it had created, it would not be able to provide relevant context. Indeed, it believed that it would be inappropriate for the Treasury to interpret the monetary policy context to such information given the MPC's operational independence underpinned by the Bank of England Act 1998.

30. The Treasury explained that, even for the Bank, it would be very difficult to compile the relevant context at this later stage. MPC members from February 2012, some of whom have moved on, would have to try to remember what they believed about the economy as of February 2012. And, even were they able to do that individually, they could not meet to discuss these projections collectively, so it would not be possible to provide the information with the weight of MPC support behind each one. Moreover, any such *ex post* exercise would potentially impose on the MPC an additional function which it is not currently required to perform.

### **The Commissioner's view on the application section 29(1)(a) and (b)**

#### **Engagement of section 29(1)(a) and (b)**

31. The Commissioner initially considered whether the relevant criteria for the engagement of section 29 were satisfied. These criteria are whether:
- (i) the prejudice claimed by the public authority is applicable to the exemption;
  - (ii) the nature of the prejudice claimed is real, actual or of substance and that there is a causal link between the disclosure and the prejudice claimed; and
  - (iii) there is a sufficient likelihood of prejudice.

#### **(i) Applicable interest within the exemption**

32. The Commissioner considered whether the prejudice claimed by the FSA is relevant to section 29. The Commissioner accepts that the types of harm that the Treasury believes would occur from disclosure of the requested information is applicable to section 29(1)(a) and (b) in that it relates to the economic interests of the UK and the financial interests of the Government of the UK.

#### **(ii) The nature of the prejudice**

33. The Commissioner next went on to consider whether the prejudice being claimed was "real, actual or of substance" ie not trivial and whether there was a causal link between disclosure and the prejudice claimed. With regard to the first element, the Commissioner is satisfied that the prejudice being claimed is not trivial or insignificant.
34. With regard to the second element, the public authority needs to be able to establish that the disclosure of the information would be likely to lead to the harmful consequences claimed. Based on the arguments presented by the Treasury, the Commissioner accepts that there is a



causal link between the disclosure of the withheld information and the prejudice that may be caused to the economic interests of the UK and the financial interests of the Government of the UK.

### **(iii) The likelihood of prejudice**

35. The Commissioner finally considered whether there was a sufficient likelihood of prejudice to engage section 29(1)(a) and (b). In the case of *John Connor Press Associates Limited v The Information Commissioner*, the Information Tribunal confirmed that, when determining whether prejudice would be likely to occur, the test to apply is that "*the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk.*" (para 15). In other words, the risk of prejudice need not be more likely than not, but must be substantially more than remote.
36. The Commissioner is clearly unable to discuss the content of the withheld information in detail. However, he has reviewed the information and notes that it is much more extensive and detailed, in terms of the forecasts that it contains over a range of economic matters and the period of time covered, than the information contained within the Bank of England's quarterly *Inflation Report*.
37. In the Treasury's view, given the current fragility of global financial markets, the release of information by key policy makers, such as the Bank of England, has the potential to affect market confidence and impact on the readiness of investors to invest funds into the UK economy. It believes that, given the financial market's focus on any communication relating to monetary policy, the release of the requested information, without further explanatory commentary, has the potential to lead to market speculation which would be likely to have a destabilising effect on the financial markets and thus have a prejudicial effect on the economic and financial interests of the UK. The Treasury is of the view that, as the release of information produced by the Bank inevitably has an impact on the markets, it is important that the Bank is able to carry out any release in a planned and structured way.
38. The Commissioner notes that the Treasury, in preparing its arguments, consulted with the Bank of England over the potential harm that might be caused from the disclosure of its detailed economic forecasts and, consequently, that the Treasury's arguments also reflect the views of the Bank.
39. The Commissioner is aware of the potentially sensitive nature of the financial markets, particularly in recent years, and that the disclosure of certain information can have a significant impact on those markets. In light of the evidence and arguments presented by the Treasury, he



accepts that the release of the Bank of England's detailed economic forecasts, which it had not planned on releasing at the time of the request, could clearly have a detrimental impact in relation to the financial markets and, consequently, on the UK's economic interests and financial interests.

40. The Commissioner, in consequence of the above, accepts that the disclosure of the withheld information would result in a real and significant risk of prejudice to the economic interests of the UK and the financial interests of the Government of the UK and that therefore concluded that section 29(1)(a) and (b) is engaged. As the section is a qualified exemption, he went on to consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosure.

### **The public interest test**

#### **Public interest arguments in favour of disclosing the requested information**

41. The Commissioner recognises that there is a general public interest in promoting transparency, accountability and public understanding. The requested information relates to the crucially important area of the economy and contains forecasts as to its likely performance in the forthcoming years. This is clearly an issue that has widespread significance given its potential impact on the public at large and in light of the uncertainties surrounding the UK economy in recent years.
42. The disclosure of the requested information may allow the public a greater insight into the context in which the Bank of England and the Treasury have taken decisions in relation to the economy, and so enhance transparency and public understanding, which in turn may help to stimulate further debate.
43. The Treasury has argued, however, that that the public interest in understanding the Bank's forecasts for the economy is satisfied to a large extent by the publication, in an informed context, of the Bank's quarterly *Inflation Report*.
44. Disclosure may also help the public to form a view about the appropriateness of the decisions that have been taken in relation to the economy and so promote accountability of those charged with making important decisions related to it. This may help to promote greater public confidence in the way that the economy is being managed.

### **Public interest in favour of maintaining the exemption**

45. The Commissioner recognises that, having accepted that section 29(1)(a) and (b) is engaged, there is a very strong public interest in ensuring that the economic interests of the UK and the financial interests of the Government are not prejudiced by the disclosure of information under the Act.
46. The Treasury also pointed out that the requested information would be covered by an exclusion under FOIA if the request had been made to the Bank. It argued that where Parliament has agreed a particular regime for the provision of information, it is not in the public interest to allow that regime to be circumvented by the ad hoc release of information.

### **Balance of public interest arguments**

47. The Commissioner has acknowledged that there is a strong public interest in the disclosure of information which would help to inform the public about the Bank of England's forecasts in relation to the economy. The disclosure of the requested information would help to enhance transparency, accountability and public debate in this area. However, he acknowledges that the strength of the public interest in the disclosure of the information is lessened to some degree by the publication by the Bank of England of its quarterly *Inflation Report* which is based on the detailed economic forecasts that were requested.
48. The Commissioner believes that significant weight should be given to the public interest arguments in favour of maintaining the exemption in order to ensure that the economic interests of the UK and the financial interests of the Government are protected.
49. The Treasury argued that any release of information produced by the Bank should be carried out in a planned and structured way and that, if it had disclosed the requested information, it is likely that it would have been misunderstood or misinterpreted. This had the potential to cause significant harm to the UK's economic and financial interests.
50. The Treasury acknowledges that the Commissioner is generally reluctant to accept arguments that relate to concerns that information should not be disclosed because it may be misunderstood. His view is that, in such circumstances, it is open to a public authority to publish some form of context or explanation to the release of information. However, he does accept that the argument that it would not be in the public interest to publish inaccurate or misleading data may carry some weight if it is not possible to provide the relevant context or explanation or if the explanation would not limit any damage caused.

51. The Commissioner accepts that this is an unusual set of circumstances in that the request was made to the Treasury for information that had been produced by the Bank of England. Consequently, it would be difficult for the Treasury to provide the requisite context or explanation which might avoid misunderstandings or misinterpretation, if the information was to be released.
52. The Commissioner also acknowledges that the disclosure of the information has to be viewed in the context of its possible impact on the financial markets which can be very sensitive to this type of information. In addition, he is aware that, if there were any detrimental impact from disclosure, this could have consequences for large numbers of people in the UK.
53. Finally, the Commissioner accepts that it is in the public interest that the Bank of England, given the crucial role that it plays in relation to the UK economy, should, in relation to the sensitive information that it produces, have some control over which of that information is published and when any publication should take place. This is acknowledged in the Act as it excludes from its remit information that is held by the Bank for the purposes of its function with respect to monetary policy.
54. After weighing all of the relevant public interest arguments, the Commissioner has determined that the public interest in maintaining the exemption outweighs the public interest in disclosure. As a result, the Commissioner has concluded that the Treasury was entitled to withhold the requested information under section 29(1)(a) and (b) and does not require it to take any further steps to ensure compliance with the Act.

### **The application of section 35(1)(a)**

55. The Treasury also considered that the information requested by the complainant was exempt from disclosure under section 35(1)(a). As the Commissioner has determined that the information is exempt from disclosure under section 29(1), he did not go on to consider the applicability of this exemption.

## **Other matters**

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56. The Commissioner notes that the complainant requested an internal review on 29 May 2012 but did not receive a response from the Treasury until 11 September 2012. It therefore took over 3 months to complete.
57. The Commissioner's guidance on internal reviews is that they should take no longer than 20 working days in most cases or 40 working days in exceptional circumstances. The Commissioner expects that in future the Treasury will ensure that internal reviews are normally carried out within 20 working days and that in no cases do they take longer than 40 working days.

## Right of appeal

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58. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

59. 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.

60. 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 .....**

**Rachael Cragg**  
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