

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 August 2024

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

#### Decision (including any steps ordered)

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1. The complainant requested from HM Treasury (HMT) information relating to Griffith cryptocurrency engagement. HMT released some of the information requested but withheld the remaining information under sections 35(1)(a) (government policy), 35(1)(d) (the operation of any Ministerial office), 40(2) (third party personal data) and 43(2) (commercial interests) of FOIA.
2. The Commissioner's decision is that HMT was entitled to rely on section 35(1)(a) of FOI to withhold the information requested. Therefore, he does not require HMT to take any steps as a result of this decision.

#### Request and response

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3. On 17 October 2023 the complainant wrote to HMT and requested information in the following terms:  
  
"1) Please provide a copy of all departmental email correspondence (including letters) sent and received by minister Andrew Griffith on cryptocurrency with  
  
- Binance  
- CryptoUK

From 27 October 2022 to date

2) Please provide a list of all meetings between Andrew Griffith and

- Binance
- CryptoUK

From 27 October 2022 to date on cryptocurrency including subject title and attendance lists

3) For any such meetings, please provide a copy of the agendas, minutes of the meeting and any civil service briefings prepared ahead of the meeting.”

4. On 30 November 2023 HMT responded and confirmed it holds information within scope of this request. HMT provided some information but withheld the remaining information under sections 35(1)(a) (government policy), 35(1)(d) (the operation of any Ministerial office), 40(2) (third party personal data) and 43(2) (commercial interests) of FOIA.
5. On 7 December 2023 the complainant asked for an internal review.
6. On 8 February 2024 HMT acknowledged the review request and apologised for the delay in responding, it explained it had to take some extra time to resolve the different considerations in this particular case.
7. On 12 March 2024, following a review of the case, HMT released further information to the complainant. However, it upheld withholding the remaining information under the exemptions cited.
8. During the Commissioner’s investigation of this case, HMT decided that some further information could be released. It disclosed some of it to the complainant, but maintained its reliance on the exemptions cited to withhold the remaining information.

## Reasons for decision

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9. This reasoning covers why HMT was entitled to rely on section 35(1)(a) of FOIA to refuse some of the information to the request.

## Section 35(1)(a) – formulation of government policy

10. Section 35(1)(a) of FOIA states:

Information held by a government department or the Welsh Government is exempt information if it relates to-

(a) the formulation or development of government policy

11. The Commissioner understands these terms broadly refer to the design of new policy, and the process of reviewing or improving existing policy.
12. The purpose of section 35(1)(a) is to protect the integrity of the policymaking process, and to prevent disclosures that would undermine this process and result in less robust, well-considered or effective policies. In particular, it ensures a safe space to consider policy options in private.
13. Section 35 is class-based, there is no need to consider the sensitivity of the information in order to engage the exemption. However, it is also a qualified exemption and is subject to the public interest test.
14. HMT stated the information pertains to the development of government policy for cryptoassets and open banking. It explained cryptoasset policies are still in early development, therefore, it's important that the government can communicate and receive feedback from stakeholders across the industry and different sectors, to ensure all viewpoints are considered. HMT said to release the information at this stage of the policy-making process, could cause a chilling effect, and disclosure of information which contributes to the decision-making process, would inhibit future discussions by hampering the ability of stakeholders to provide frank views on issues. HMT considers this could undermine the subsequent development of policies by weakening the ability of Government to be fully informed when making important policy decisions. HMT said "this is essential in a new area of policy which is largely unexplored."
15. HMT stated the importance for policy development in a new area to be a safe space for officials and stakeholders. This, it said, is in order to hold discussions and gather feedback, and collect full engagement from organisations across the financial services sector. Also, to ensure Minister's are treating all stakeholders across the sector fairly.
16. The Commissioner has had sight of the withheld information which consists of details relating to Binance meetings, CryptoUK meetings and CryptoUK correspondence. He is satisfied that at the time of the request, it related directly to the formulation of government policy on cryptocurrency regulation.

17. He acknowledges that there are discussions of the regulation of cryptocurrency, and they are likely to determine how a financial product is regulated in the UK. The exemption at section 35(1)(a) of FOIA is therefore engaged in this instance.

### **Public interest test**

18. The Commissioner has considered the context of the information, in order to determine whether the public interest in maintaining the exemption outweighs the public interest in favour of disclosure.

### **The complainant's arguments**

19. The Commissioner acknowledges the complainant's dissatisfaction with HMT's refusal to disclose further information related to government correspondence with the Cryptocurrency industry, and considered the complainant's arguments on the public interest.
20. Essentially, the complainant is of the view that there's a strong public interest in "transparency around the government's engagement with the crypto industry given the high risks such financial products pose, both in terms of consumer losses and of high money laundering risks." He referred to recent criminal investigations in the United States into crypto trading platforms. He also believes there's high public interest in "scrutiny of the industry's approach to UK government, and what industry asks of government have been". The complainant considers discussions of the regulation of cryptocurrency are likely to determine how a high-risk financial product is regulated in the UK, and are not just a routine input from a commercially interested party on regulation.

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

21. HMT recognises that there is an inherent public interest in transparency and accountability of public authorities. It is also aware of the public interest in furthering public understanding of the issues which public authorities deal with. In particular, in the work of government departments being transparent and open to scrutiny to increase diligence.
22. HMT said that in this case, there is "public interest in the Government's approach to cryptoasset regulation; in upholding confidence that HMT stays in touch with developments in financial services in the UK; in providing assurance that ministers treat financial services businesses fairly; and in ensuring that money is spent correctly on maintaining contact with financial services businesses." HMT said it also recognises that Binance in particular, has been subject to media attention and regulatory action globally, including in the UK.

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

23. HMT argued that there is a strong public interest in maintaining a safe space for it to engage with external organisations on the development of policy. HMT said this is important for it to operate effectively as an economics and finance ministry and reach well-formed conclusions. HMT further argued that disclosure of information which contributes to an ongoing decision-making process, would inhibit future discussions. It said there is a public interest in protecting information where release would be likely to have a detrimental impact on the ongoing development of policy.
24. HMT referred the Commissioner to Government guidance<sup>1</sup> in which the Government previously published plans to make the UK a global cryptoasset technology hub. The information within scope discusses the government's approach to cryptocurrency regulation.

### **Balance of the public interest test**

25. The Commissioner accepts that the disclosure of this information will prejudice policy development and will have wider implications. He also notes the information relates to the formulation and development of an ongoing policy development.
26. The Commissioner considers that in general, there is often likely to be significant public interest in disclosure of policy information, as it can promote government accountability, increase public understanding of the policy in question, and enable public debate and scrutiny of both the policy itself and how it was arrived at.
27. The Commissioner considers in this instance, the balance of the public interest favours maintaining the exemption. In reaching this conclusion, the Commissioner does not seek to underestimate the concerns that have been raised about cryptoassets, and he accepts that such concerns increases the public interest in disclosure of the withheld information. However, the Commissioner deems the risks of disclosure both in terms of safe space and chilling effect are notable
28. In this case, the Commissioner understands that the withheld information details confidential discussions relating to cryptoasset policies.

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<sup>1</sup> <https://www.gov.uk/government/news/government-sets-out-plan-to-make-uk-a-global-cryptoasset-technology-hub>

29. He notes that at the time of the request, the formulation of policy on cryptoassets was still in its early development, it was clearly a 'live' matter, and it remains so at the time of this notice. The Commissioner is therefore of the view that there is a clear and strong public interest in protecting this policy-making process.
30. The Commissioner accepts that a safe space is needed to develop ideas, debate live issues and reach decisions away from external interference and distraction, and the need for a safe space will be strongest when the issue is still live.
31. The Commissioner also accepts the topic of cryptocurrency is frequently in the media, and that there are raised concerns amongst some members of the public. He is aware that this topic will have its challenges, especially with the risks these financial products may present i.e. consumer losses and risks of money laundering.
32. As this information relates to a policy development on cryptocurrency regulation, and there is still significant discussion, the Commissioner believes disclosure of the information requested could impact policy decisions. This would undermine the safe space needed for policy formulation and development.
33. The Commissioner acknowledges the information which HMT subsequently provided to the complainant. Although some of the disclosed information had been redacted, and the complainant considered further information should be released, the Commissioner recognises the content should be enough to satisfy the public interest.

### **The Commissioner's position**

34. In conclusion, the Commissioner considers that, taking account of the particular stage of the policy making-process regarding cryptocurrency regulation, allowing for deliberation of policy formulation in a protected space carries significant weight.
35. The Commissioner finds therefore that the public interest in maintaining the exemption outweighs the public interest in disclosure at the time of the request. The Commissioner's decision is HMT was entitled to rely on section 35(1)(a) of FOIA to withhold the information requested. In view of this decision, the Commissioner has not found it necessary to consider the other exemptions cited by HMT in this case.

## Other matters

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36. There is no obligation under FOIA for a public authority to provide an internal review process. However, it is good practice to do so and, where an authority chooses to offer one, the section 45 Code of Practice<sup>2</sup> sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
37. In this case, the complainant requested an internal review on 7 December 2023 and HMT provided its review response on 12 March 2024, over 60 working days later. The Commissioner reminds HMT of the Code of Practice and urges it to respond to requests in a timely manner.

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<sup>2</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-45-code-of-practice-request-handling/>

## Right of appeal

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38. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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