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Information Rights Unit

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Our Ref: R35/2009

Dear Mr Hinks,

FOI internal review: Information on Notices of Lawful Rebellion and other notices

Thank you for your message of 23 August in which you sought an internal review of our response to your Freedom of Information Act ("the Act") request of 30 June.

2. In your request you asked:

- i. How many notices declaring Lawful Rebellion, under article 61 of the magna carta 1215, bill of rights or any other common law have you received in the years 2006, 2007, 2008, 2009;
- ii. How many 'notices of understanding, intent and claim of rights' have you received in the same periods;
- iii. What action if any has been taken against those who send you either/both of the above.

3. Our response to you of 19 August explained that, in order to identify the information that you had requested we would need to search correspondence recorded under a large number of headings in order to ascertain whether or not this information was held by the Treasury. Given the large amount of information we would need to search, we considered it would exceed the statutory cost limit of £600 to identify the information you sought. We therefore refused your request under section 12 of the Act. Section 12(1) does not oblige a public authority to comply with a request if it estimates that to do so would exceed the appropriate cost limit.

4. You have asked, in your review request, why it would be necessary to trawl through so much correspondence. You have suggested that a notice of the kind you have asked about is different to a letter and would be recorded more accessibly, especially considering what you term "the lawful implications of each notice".



The review

4. In my position as Head of the Information Rights Unit I have led a review of the handling of your request on behalf of the Treasury and am writing to provide the conclusions from this review.
5. It may help you if I first say a little about Treasury processes for handling correspondence. As we indicated in our response the Treasury receives thousands of pieces of correspondence each year. Where correspondence is addressed in a general way to HM Treasury it is delivered to the Treasury's Correspondence and Enquiry Unit (CEU). The figure of over forty thousand pieces of correspondence we referred to in our earlier letter only relates to correspondence routed through CEU. Other correspondence may be sent direct to named contacts in the department or to Treasury Ministers, in which case it may not be logged by CEU.
6. For correspondence routed through CEU the topic of each piece of correspondence is identified and it is logged on a correspondence tracking system, designed to allow CEU to follow the progress of individual items of correspondence. At that point it is also given a case reference and allocated to a Treasury team to take any necessary action. This process is designed to manage effectively the large number of letters and messages the Treasury receives. While most correspondence arriving in CEU is logged on the tracking system for Treasury action, correspondence identified as falling within the remit of other government departments may be forwarded to them to provide a response or, if we cannot identify an owner for the topic we may refer correspondence back to the sender.
7. The stage of the process where topics are identified is relevant to your request. The correspondence tracking system is designed to track cases using the name of the requester, or the case reference number. It is possible to identify cases by subject or by a combination of subjects, but these searches are more time consuming unless there is an exact match to the subject list, as each case has to be opened and read to see whether it matches the required subject area. The system includes a list of topics against which cases are logged, however in cases where the topic of the correspondence does not have a clear match to a heading on the list, CEU staff use their judgement to determine which topic the correspondence should be logged against. This means that searches would necessarily be wider as a range of possible subject headings would need to be considered and cases recorded under each heading would need to be checked for content.
8. As I have indicated above, cases logged by CEU form only a part, albeit a large part, of correspondence coming to the Treasury. For example, where correspondence is sent direct to Ministers it may be necessary to ask Ministerial offices to check their records, or where correspondence has been sent direct to a particular policy area, additional searches may be needed. Given the broad time frame of your request and since you had not identified the recipients of the notices you asked about, the view was taken that the range of searches that would also be necessary to identify any correspondence that was in the scope of your request would breach the cost limit.
9. The cost limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 and, for Government departments, is set at £600. In considering whether or not the costs limit is engaged the public authority is entitled to take into account the

time taken in determining whether it holds the information, locating the information, retrieving the information and extracting the information from a document containing it. To the extent that the costs are attributable to the time spent in undertaking these activities those costs are to be estimated at £25 per hour – which equates to 24 hours work by one individual. In this case, a search of the cases logged onto the correspondence tracking system as relating only to legal issues or recorded under the 'general' heading – which is often the repository for cases that do not match specific headings on the list – identified over 1,400 cases. If one were to spend only one minute locating and looking at each piece of correspondence to identify whether it fell within the scope of your request, this would bring us close to the cost limit and, taking account of the time taken to do any wider searches, a full search would have exceeded the cost limit. Having reviewed this case we consider that the decision to apply section 12 was correct.

10. Although we consider that it was appropriate to apply the cost limit, in considering your review request we have concluded that we could have done more in our original response to provide advice and assistance to you in seeking to either identify ways in which you could narrow your request or to explain why we did not think it would be possible to bring your request within the costs limit. Given this shortcoming, as part of the review, we have carried out some additional work to attempt to identify the information you have requested. We have checked all the cases that have been charged to Treasury Legal advisers since 2006 but these do not contain correspondence of the kind you have asked about. We have also checked the subject list in the correspondence system to try and narrow the range of headings where correspondence of this kind might be recorded. We have not found any subject areas that specifically relate to 'lawful rebellion'. However we have identified a heading for 'claim of right'. There are two letters recorded under this heading. The cases have been recorded as 'closed' on the system and no action has been recorded against them. More generally, in the course of the review we have identified that a number of letters of the kind you describe have been returned to senders, under a covering letter confirming that no action has been taken, as the subject matter has not been recognised as an issue for the Treasury. We do not hold recorded information on the number of cases handled in this way as these letters were dealt with outside the recording system.

11. We have concluded that, although we should have done more in our original response to seek to identify ways in which your request could be narrowed to bring it within the costs limit in accordance with our duties under section 16 of the Act, it is in practice difficult to identify the information that you seek. Also, our discussions with staff suggest that it is likely that correspondence of the kind you have asked about has been returned to the senders.

12. While not providing the full information you had requested I hope that this explanation will be helpful to you. I also hope that you will be assured that the Treasury has on your behalf, carried out a thorough and considered review of the request you made and the response that the Treasury gave under the FOI Act.

13. As part of the review I have sought to identify why you were not provided with a response to your request within the 20 working days allowed by the Act. I have identified that your request was acknowledged by CEU on 1 July 2009 and was logged as an FOI request from that date, but it appears not to have come to the attention of my team until a later date. We apologised for the late response in our reply. I would add my own apologies. We take the statutory deadline very seriously and, generally, have a good record in meeting it. I am sorry that we did not do so in this case.

If you wish to take this matter further you may apply directly to the Information Commissioner, who can be contacted at The Information Commissioner's Office, Wycliffe House, Water lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,



Kate Jenkins

Head of Information Rights Unit
On behalf of HM Treasury