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Ref: Review 19/2010

Dear Mr Todd,

Freedom of Information Act Internal Review: COINS Public Spending Data

On 11 May you asked the Treasury to review its response to your request of 11 April, in which you asked for '23 complete records from the COINS database'. This letter is to let you know the outcome of the review. It also addresses the points you raised on 5 June, after the publication of COINS data.

Your request

Following our refusal on 29 March to disclose the entire COINS data, on 11 April you requested 23 complete sample records, excluding any that would engage exemptions. The department indicated that your request would need to be clarified but advised that a clarified request was unlikely to be successful because it had been established, in relation to an earlier request, that the information in COINS was exempt under the FOI Act and that the public interest lay in protecting the information.

Additional points in your review request

In requesting a review, you suggested that the Treasury could reasonably have been expected to make a sensible interpretation of what a complete record was, in view of your lack of access to information about the database, and in line with our responsibilities under section 16(1).

You wrote again on 5 June, following the decision by the government to publish substantial amounts of COINS raw data, asking us to consider if this meant that exemptions had been incorrectly applied in response to your requests; if so, what was the cause and whether it pointed to political interference; and whether any steps had resulted to ensure the Treasury properly handled FOI requests in future. The review has also considered these points.

The review

The review was led by an official from a different Directorate to that which produced the original response, to ensure a fresh look at the matter. The review considered whether due process was followed in handling your 11 April request and whether the arguments put forward in your review request had a bearing on the continued applicability of the arguments for exemption. The findings of the review have been endorsed at Director level.



Review conclusions

In terms of process, the review concluded that the response to your request constituted a valid refusal in all respects and was provided within the statutory deadline. Arguably, the response should have been provided more promptly, especially in view of previous correspondence with you. We apologise for any delay in that regard, which was due to pressure of other work, including a spate of other FOI requests relating to COINS.

Your point about our failure to apply a sensible interpretation to your request is a difficult one. You rightly pointed out that we had ourselves described the database as consisting of about 24 million rows of data and, by implication, it might have seemed possible to understand the request in terms of a sample number of those rows. However, in essence, the review understood that not all of those rows would constitute a complete record. In this regard the review noted that the now published data were in two distinct compartments – the Fact Table, which includes rolled up data, and the Adjustments Table, reflecting changes lying behind the rolled up position.

The Information Commissioner's guidance warns authorities not to presume to interpret requesters' wishes. In the light of the above points, the review concluded that, in this case, there was no self-evident interpretation. However it recognised the difficulty that requesters would have in identifying a 'complete row' and concluded that it would have been helpful to have discussed, over the telephone, the limitations on data, had the department been in a position to do so. It would also have been possible to suggest in the response, that such a discussion might be helpful. However the review agreed that since the department's view, at that point in time, was that all COINS data should be withheld, this would have been a nugatory exercise. As indicated, the review judged that it was a cause for regret that we did not reply to you earlier in writing.

Your questions of 5 June

You have asked if the subsequent publication implies that there was something amiss about the way exemptions were applied. Although, formally, no exemptions were applied in relation to your second request, the review considered that it should comment on the application of exemptions in relation to your request of 19 February. The review took the view that the exemptions cited in relation to that request had been correctly engaged and maintained. In this context the review noted that, with one exception, the published data continues to be subject to the same exemptions. This is because the exemptions under the Act are designed to address real sensitivities, which remain relevant when information is published proactively. Since you cited the publication as the model against which the handling of your request had to be measured, the review did not go on to consider the public interest factors in depth.

The one exemption that has not been maintained in publishing the COINS data is section 36(2)(c). This is a class exemption (applicable to a class of information) that had hitherto been applied to all data where other, more specific, exemptions were not engaged. Section 36 exemptions may only be cited on the basis of the reasonable opinion of a 'qualified person'. In the case of a government department, that qualified person has to be a minister (section 36(5)(a)). When ministers were asked for their opinion, they considered that, unless otherwise exempt, the publication of COINS data would be 'likely to prejudice the effective conduct of public affairs', given the volume and complexity of the data.

Section 36 is a qualified exemption and, where it is engaged, a judgement needs to be taken on whether the balance of public interest favours disclosure or protection.

The review considered whether this decision in the relation to the decision to withhold this information was inconsistent with the subsequent publication and concluded that it was not. Consideration of the public interest balance at the time took into account the questions, confusion and false interpretations that were likely to arise from disclosure and the fact that the Treasury already publishes a very large amount of spending data which is largely drawn from COINS. The new government has made a different assessment in a different set of circumstances, and has concluded that the public interest favours disclosure of information that had previously been protected under section 36(2)(c). But the review noted that external commentators have indeed



exclaimed at the complexity of the published data, that their release has given rise to misunderstanding and that the government has committed to publishing more easily understood datasets drawn from COINS and to organising seminars on the subject. These factors do tend to corroborate the considerations underlying the previous decision.

Lastly, you asked about steps taken to rectify any improper handling; however as the review did not judge that there had been impropriety, this point falls away.

I hope this account demonstrates to you that your complaint has received appropriate consideration and that we have taken a proper, fresh look at all the circumstances of the case.

We are glad that the publication of COINS data has been received so positively, despite its inherent complexities. The government has, of course, committed to further transparency on public spending, as well as in other areas.

If you are not content with the outcome of this internal review, you have the right to apply directly to the Information Commissioner for a decision. The Commissioner can be contacted at: FOI/EIR Complaints Resolution, Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. The Commissioner's website provides further guidance and a template for complaints at the following link:

http://www.ico.gov.uk/complaints/freedom_of_information.aspx

Yours sincerely,



Kate Jenkins

Head of Information Rights Unit



