

Matt Smith

020 7270 5000
foirequests@hmtreasury.gov.uk
www.gov.uk/hm-treasury

8 June 2022

Dear Matt Smith,

Refs: IR2022/09980
FOI2022/02925

Freedom of Information Act 2000 Internal Review

Thank you for your email dated 14 May, requesting an internal review of our handling of your information request made under the Freedom of Information Act 2000 (the FOI Act), under our reference: FOI2022/02925.

The department has now completed its internal review process and has carried out a thorough review of the case overseen by a senior official who was not involved with the original request.

Background

On 10 February, you made the following request under the FOI Act:

"However, I will try and reduce my request to just 14 email threads, as detailed below:

11-12-2019, Lindsey's request

11-12-2019, LC review

11-12-2019, Early sequencing

11-12-2019, [for comment by 2pm Thurs] Loan Charge Review 10-12-2019, Loan Charge Question 10-12-2019, Loan Charge advice 10-12-2019, LC handling with CX 10-12-2019, Concession Option costings 09-12-2019, Table for Recommendations 09-12-2019, Sitrep 09-12-2019, No 10 09-12-2019, Loan Charge reading room 09-12-2019, Loan Charge advice 09-12-2019, Loan Charge - one year delay

As per my previous request, I the list includes the date when Mrs Suzy Kantor replied to those emails, but of course the date range should be extended to encompass the entire thread, which may have started before Mrs Kantor's email, and/or continued later."

On 10 March we provided an interim response. We explained that the information we identified within the scope of your request may engage the exemption provided for by section 35(1)(a) - formulation and development of Government policy – of the FOI Act.

Section 35 is a qualified exemption, and we are required to balance the public interest between disclosure and non-disclosure.

By virtue of section 10(3) of the FOI Act, where public authorities have to consider the balance of the public interest in relation to a request, they do not have to comply with the request until such time as is reasonable in the circumstances. We explained that the Treasury has not yet resolved the different considerations and therefore we needed to take some additional time to assess whether the public interest in withholding the information outweighs the public interest in disclosing it.

We sent further interim letters on 7 April and 10 May, explaining that we are still considering the public interest balances raised by your request and therefore weren't in a position to provide you with the outcome of our considerations.

On 14 May, you requested an internal review as follows:

"I am writing to request an internal review of Her Majesty's Treasury's handling of my FOI request 'Emails on the Draft Loan Charge review report from named officials'.

This is the third time I receive a letter from you announcing a delay in your response to my FOI request, this time to the 9th of June.

The ICO states that authorities must reply to FOI requests "promptly and within 20 working days"; and "section 10(3) only permits extensions for further consideration of the public interest": a total of 40 working days. Any extension beyond that, the ICO states clearly, is possible only in exceptional circumstances.

By the time I will receive your response, assuming it's not another postponement, 80 working days will have passed since my request, dated 7 February 2022.

Moreover, the reason you cite for the repeated postponements is Section 35(1)A of the FOIA, which relates to ongoing development of policy. This argument is extremely weak given the emails I am requesting are almost three years old, and relate to a policy which was both fully developed and implemented at the time those emails were sent.

It is extremely unlikely Section 35(1)A can apply to this request, and anyway the ICO states clearly that any postponement should only relate to the public interest test: "the additional time cannot be used to determine whether the exemptions themselves are engaged".

I am therefore requesting an urgent internal review on this matter, and the immediate release of all the material requested without further delays."

The Review

I have considered the interim responses we provided to you and whether our handling was compliant with our obligations under the FOI Act.

We continue to consider that the information within scope of your request engages section 35(1)(a) - formulation and development of Government policy – of the FOI Act.

You requested disclosure of 14 specific email chains involving Suzy Kantor in which the following key terms are used: "loan charge", "LC", "Amyas", or "Morse". When considering the loan charge policy, the Information Commissioner's guidance on section 35(1)(a) states that "the timing of the request is not relevant. The question is whether the information relates to policy formulation or development, irrespective of when the request was made". At the time that the information requested was created, the loan charge policy was ongoing, and a ministerial decision was yet to be made. In addition, due to the broad nature of your request, the loan charge policy is not the only policy area contained in the email chains.

Our interim letter dated 10 March set out that we always try to reply to FOI requests in full within 20 working days but in this case, we had not resolved the public interest balance considerations and needed more time to do so. Sending an FOI requester an interim reply to explain that we require some additional time is permitted under the FOI Act when a public authority is in the process of considering a qualified exemption like section 35(1)(a) and the associated public interest balance considerations. Our interim reply estimated it would take us approximately four weeks to complete our considerations, though we would respond sooner if possible.

We take our statutory obligations under the FOI Act very seriously and aim to respond to requests within 20 working days. When it is necessary for us to consider the public interest balances, we aim to respond within 40 working days or within a reasonable timeframe of the original request. As the Information Commissioner's Office recognises, the FOI Act does not define what might constitute a 'reasonable' extension of time. It does acknowledge that an extension beyond this should be exceptional, which we feel has been the case with this request. We therefore sent further interim letters on 7 April and 10 May.

Given the points above, I am satisfied that the Treasury correctly issued an interim reply, in compliance with the FOI Act however we do apologise for the delay in providing a response and for any inconvenience this causes you.

Please be assured that we are continuing to work on our response to your request and will respond to your FOI request in due course once our public interest balance considerations have been completed.

Conclusion

While I am aware you may find these conclusions disappointing, I hope that by setting out the basis of the review, its findings and conclusions above, 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 responses that the Treasury gave under the FOI Act.

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: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow SK9 5AF.

Yours sincerely

Head of Information Rights Unit