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1 September 2021

Dear F Thompson

Ref: FOI2021/15854

## Freedom of Information Act 2000

Thank you for your enquiry of 7 June 2021, which we have considered under the terms of the Freedom of Information Act 2000 (the FOI Act). We would like to apologise for the delay in responding.

On 9 March 2021 you asked for the following information:

*"Please provide full and comprehensive details of all recorded communications and evidence (including, but not limited to reports, documents, notes, meeting minutes, emails, SMS messages, WhatsApp messages, computer files, letters and any sound or video recordings) between Beth Russell and any other individual prior to 06 September 2019 containing any reference to this subject, and which culminated in the final decision to select and approach Sir Amyas Morse to head the government's review into the Loan Charge.*

*Please also provide similar details (noting that individual names can be redacted whilst enabling the substance of the debate around their suitability or otherwise to be published) of how many other potential candidates were considered for this role, and specifically what criteria was used by HM Treasury and government officials to determine how Sir Amyas Morse was considered as more suitable in experience than a wholly independent and qualified tax judge, or indeed any other possible candidates for the appointed task."*

We replied on 9 April 2021 and explained that we held information within scope of your request. However, we refused this request as to comply with it would exceed the appropriate cost limit for central Government. We advised that should you narrow your request we may be able to comply with a future request.

*"I am uncertain as to why you would respond by saying that there is a requirement for a number of officials to search their records (which is quite unnecessary), when I have only asked for the recorded communications and evidence that pertain specifically to those exchanged by any individual with one person - Beth Russell. Surely, in any reasoned and sensible interpretation of that request, it therefore only requires Beth Russell's records to be searched and no others?*

*Perhaps it is because I have used the phrase 'prior to 06 September 2019'. If that is the case, then please search Beth Russell's recorded communications and evidence between 28 June 2019 and 06 September 2019, which amounts to just 50 working days. I fail to accept that a search of one person's records over such a short period of*

*time on the referenced subject would be either onerous, or unachievable within the available time limits.*

*All other aspects of the request, such as the types of recorded communications and evidence, the details of other potential candidates, criteria used by HM Treasury and government officials etc. remain unchanged."*

We wrote to you on 6 July 2021 to explain that we held information in scope of your request and by virtue of section 10(3) of the FOI Act, we needed to give further consideration to the public interest with regard to the information under section 36 of the FOI Act, which relates to prejudice to the effective conduct of public affairs. We have now completed our assessment and this letter sets out our conclusions on your request.

We consider that the information you have requested engages sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) of the FOI Act:

- Section 36(2)(b)(i) exempts information if, in the reasonable opinion of a qualified person, disclosure of the information under the Act, would, or would be likely to, inhibit the free and frank provision of advice.
- Section 36(2)(b)(ii) exempts information if, in the reasonable opinion of a qualified person, disclosure of the information under the Act, would, or would be likely to, inhibit the free and frank discussion of views for the purposes of deliberation.
- Section 36(2)(c) exempts information if, in the reasonable opinion of a qualified person, disclosure under the Act would otherwise prejudice, or would be likely to otherwise prejudice, the effective conduct of public affairs.

We believe disclosure in this case would be likely to inhibit the free and frank provision of advice and exchange of views in regard to future discussions on appointments. This is on the basis that officials would be likely to be less willing to discuss in a free and frank manner the suitability of candidates if they believed those discussions could be released under the FOI Act.

We believe that the effective conduct of public affairs would be prejudiced if, as a result, the effective evaluation of candidates in a future selection process was impeded and therefore less robust than would otherwise have been the case.

Section 36 is a qualified exemption and we are obliged to consider the balance of the public interest between disclosure and non-disclosure.

We recognise that there is a public interest in the transparency and accountability of public authorities like HM Treasury. We also recognise the public interest in furthering their understanding of the issues dealt with by the Government.

However, balanced against this, is the public interest in protecting government officials' ability to seek advice and candidly discuss issues and to reach well-formed conclusions in relation to senior appointments. The public interest would not be met by the suppression of officials' opportunities to make deliberations about candidates in a safe space. This inhibition could impair the quality of judgement made by a department. We have concluded that the balance of the public interest falls strongly in favour of withholding the information.

Some of the information within scope also falls under Section 40(2) of the FOI Act. Section 40(2), by virtue of section 40(3A) provides an absolute exemption for third-party personal data, where disclosure would contravene any of the data protection principles set out in Article 5 of the General Data Protection Regulation. The first data protection principle requires the disclosure of third-party personal data to be lawful, fair and transparent. We

believe that releasing the information would breach the first data protection principle, since it would be unlawful and unfair to release the information.

If you have any queries about this letter, please contact us. Please quote the reference number above in any future communications.

Yours sincerely

Information Rights Unit

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Email: [foirequests@hmtreasury.gov.uk](mailto:foirequests@hmtreasury.gov.uk)

It would assist our review if you set out which aspects of the reply concern you and why you are dissatisfied.

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