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Dear Ms McGregor

Refs: R23/19
IR2019/06402
FOI2019/00343

Freedom of Information Act 2000 Internal Review: Bank Referral Scheme

Thank you for your email of 25 April 2019, requesting an internal review of our response to your information request made under the Freedom of Information Act 2000 (the FOI Act) on 6 February 2019, our reference: FOI2019/00343.

We have now completed our internal review and this letter informs you of its conclusions. The review was conducted by officials not involved with your original request.

Background

On 9 January 2019, you made the following request under the FOI Act:

"Please can you provide me with some further data relating to the success of the policy to introduce the Government Referral Scheme in addition to the statistics on this page <https://www.gov.uk/government/collections/bank-referral-scheme-official-statistics>

1. Specifically I would like to know how much it has cost British Business Bank and HM Treasury to implement this policy. British Business Bank have told me they have no cost as all is reclaimed by them and paid by HMT.

2. I would also like a link to the findings following the review of these scheme conducted by Prof Russel Griggs."

On 6 February 2019, we provided our response. We explained that further data to what was already available at the webpage you quoted would be published in the future by the Treasury – this engaged section 22(1) of the FOI Act. Information on the cost of implementing the scheme by the British Business Bank and the Treasury engaged section 43(2) – prejudice to commercial interests. The findings of Professor Grigg's review of the Bank Referral Scheme engaged section 35(1)(a) – development of Government policy.

On 25 April 2019, 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 'Government Referral Scheme'.

The reasons given for not disclosing this information seem very far-fetched. Why can this information not be shared with the public? It concerns funds from the public's purse. This information should be readily available within HM Treasury, and if it has not been accounted for properly, that should be resolved.

I understand that this is not the first time an FOI on this Government Referral Scheme has been refused, and therefore I would say it is very much information which is being requested by the public. Please provide it, as requested.

A full history of my FOI request and all correspondence is available on the Internet at this address:

https://www.whatdotheyknow.com/request/government_referral_scheme"

The Review

I have considered the response we provided to you and whether our handling was compliant with our obligations under the FOI Act. I note your reference to information on the Bank Referral Scheme being sought previously. The Treasury considers every individual case made under the FOI Act on a case by case basis.

I consider that the Treasury provided a full, detailed response to your FOI request, correctly engaging sections 22(1), 43(2) and 35(1)(a) by explaining the meaning of each exemption and why each was engaged. My view is that the response was a helpful one.

However, as part of the review, I have looked again at our response against the information requested and my considerations are set out below.

The further data you requested on the success of the Bank Referral Scheme engages section 22(1) of the FOI Act, which relates to information to be published in the future. Section 22 is a qualified exemption and we have explained below our considerations for release and non-release of further data.

There is a public interest in transparency and openness. However, public authorities such as the Treasury must, within reason, have space to be able to determine our own publication timetables and deal with the necessary preparation, administration and context of publication. The FOI Act recognises that the coincidence of individual requests for information should not determine the publication timetables of public authorities, for example, by forcing us into premature publication. Releasing such information now would interfere with this process, which would not be in the public interest. In addition, there is a strong public interest in the information for publication being available to everyone at the same time, to ensure an equal playing field exists for all those with an interest in the data.

Having set out our public interest balance considerations, we judge that the balance of interest lies in not disclosing the information held at this time. Further data on the Bank Referral Scheme will be updated in August 2019 at the link you referred to your request:

<https://www.gov.uk/government/statistics/bank-referral-scheme-august-2018>

Information on the cost of the British Business Bank (BBB) and HM Treasury implementing the scheme engages section 43(2) – prejudice to commercial interests – which is a qualified exemption.

We recognise the public interest in transparency regarding the accountability of public funds and that commercial business is conducted appropriately. We are aware that such transparency can inform public debate and understanding of the issues dealt with by the Treasury.

Balanced against this is the strong public interest in the Government not harming the commercial position of private companies by releasing commercially sensitive information which was shared with us with the expectation that it would remain confidential. Trust from our stakeholders is an essential part of the Treasury's engagement as an economics and finance ministry. We consider that the disclosure of information that is likely to prejudice the commercial interests of external companies would not be in the public interest.

The BBB administers the Bank Referral Scheme. The BBB's website can be accessed via the following link:

<https://www.gov.uk/government/organisations/british-business-bank>

The BBB's budget is subject to a confidential commercial agreement which is signed by the Treasury; the Department for Business, Energy and Industrial Strategy; and the BBB. This agreement is not available publicly because it is a confidential agreement, the release of which would harm future costings and liability policy discussions, which would not be in the public interest. In addition, release may harm the trust the Treasury has more widely with the financial services sector.

Given the above public interest balance considerations, we conclude that the public interest in withholding the information outweighs the public interest in its disclosure.

Regarding Professor Grigg's review of the Bank Referral Scheme, the information we have identified engages section 35(1)(a) of the FOI Act. Section 35(1)(a) is engaged because the information in scope relates to the development of Government policy on the Bank Referral Scheme. We have set out below our public interest balance considerations between release and non-release of the review findings.

In relation to the release of the findings, we recognise the public interest in transparency and accountability of Government departments such as the Treasury. We also recognise the broad public interest in furthering public understanding of the issues with which the Treasury deals with. There is a clear public interest in the work of Government departments being transparent and open to scrutiny to increase diligence and understanding of the issues we deal with.

Balanced against this is the public interest in protecting the Government's ability to discuss and develop policies in order to reach well-formed conclusions. The Information Commissioner has recognised that policy development needs some degree of freedom to enable the process to work effectively and we consider that there is a strong public interest in protecting information where release would be likely to have a detrimental impact on the ongoing formulation and development of policy.

There is a strong public interest in protecting against encroachment on the ability of Ministers and officials to formulate and develop policy options freely and frankly. This is particularly the case regarding Professor Griggs' review of the Bank Referral Scheme because the Treasury is currently reviewing the policy with reference to the Competition and Markets Authority's response to their Retail Banking Market Investigation.

We consider that disclosing the information held, which relates to live policy development, would be likely to prevent officials from conducting free and frank discussion and rigorous and candid assessments of all the available options in the course of the statutory review. In addition, we believe that disclosure could prematurely close-off discussions and/or the development of options now or in the future. This would not be in the public interest.

Given the reasons set out above, we conclude that the public interest lies in favour of withholding this information.

Conclusion

Whilst 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 in detail, 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.

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

Correspondence and Information Rights Team Leader