



**HM Revenue  
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By email to:  
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**Date** 9 July 2010  
**Our Ref** FOI 1596/10  
**Your Ref**

[www.hmrc.gov.uk](http://www.hmrc.gov.uk)

## **Freedom of Information request - Information from 1 November 2007**

Dear Mr Jagger,

### **Introduction**

Thank you for your email dated 10 June 2010 in which you requested an internal review under the Freedom of Information Act (FOIA). I am aware that you have made a number of related requests for information concerning Budget Note 66 which was announced on 12 March 2008 and is published on the HMRC website at the following link:

<http://www.hmrc.gov.uk/budget2008/bn66.pdf>

### **Your Request**

In response to an earlier request you made (our ref FOI 2268/09) HMRC confirmed to you on 24 November 2009 that the use of retrospective legislation in respect of BN66 was first broached at a meeting on November 2007. You subsequently made the following request on 11 May 2010:

*"Please can you supply information from the meeting about the scheme referred to in Budget Note 66 (12th March 2008)."*

### **Our response**

On 9 June 2010, Mr Sharpe responded by confirming that HMRC held information within the scope of your request but advised you that the information was exempt from disclosure

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under the FOIA. He informed you that the information held was considered exempt under s35(1)(a) and s42(1) of the FOIA.

### **Internal Review**

FOIA is applicant and purpose blind which means that an applicant's particular reasons for making a request are not material to the handling of a request. I have been asked to review your request and its handling. The purpose of the internal review is to provide a fair and thorough review of decisions made pursuant to the FOIA. In carrying out this review, I have looked at the exchanges of correspondence and at the information in question. I have also consulted with those involved in dealing with your initial request.

I see that the response was provided within the statutory deadline, in accordance with section 10(1) of the FOIA. The response set out information about HMRC's review procedure and your right to complain to the Information Commissioner, as required by section 17(7) of the FOIA.

I am satisfied that a reasonable search was carried out for the information you requested. Having identified the information in scope, I see that Mr Sharpe has applied exemptions to all of the information within scope.

### **Exemptions**

#### **Section 35(1)(a) FOIA**

Section 35 is a class exemption under the FOIA and, as Mr Sharpe explained in his response, it applies to information held for the formulation or development of Government Policy. I am satisfied that the exemption is engaged because the information you requested concerns the Budget Measure which announced legislative changes to be introduced in the Finance Bill 2008.

### **Public Interest considerations**

I have noted Mr Sharpe's consideration of the public interest and agree with the points he has raised. In most situations, budget measures will have a direct impact on individuals affected by the changes in tax legislation. In particular, where retrospective measures are introduced, the impact on individuals may be greater because it affects not only their future tax liabilities but also historic liabilities which they may not have anticipated or budgeted for.

I recognise the public interest in transparency when decisions to introduce retrospective legislation are made. In fact, I note that, in the Twentieth Report of the 2008-09 session, the Joint Committee on Human Rights recommended that, in the future, a memorandum be provided by HM Treasury to the Committee identifying provisions in the Finance Bill which have retrospective effect. On 1 April 2010, the HM Treasury Minister Stephen Timms issued such a memorandum in respect of the Finance Bill 2010.

<http://www.parliament.uk/deposits/depositedpapers/2010/DEP2010-1004.pdf>

Going forward, I consider that the public interest is therefore mitigated by such transparency.

With reference to the information being withheld in this case, I consider that the public interest in openness is in part mitigated by the information which is already published in relation to the particular Budget measure. For example, the Parliamentary debate on the Budget Measure is available at the following link:

<http://www.publications.parliament.uk/pa/cm200708/cmpublic/finance/080522/am/80522s03.htm>

Such releases provide a necessary platform for the government to update its economic assessment and response in a measured and holistic way. Parliamentary and media scrutiny ensures that accountability requirements are addressed.

On the other hand, there is a strong public interest in conducting a thorough and secure Budget process which balances the necessary openness with the need to discuss Budget options to enable a set of balanced decisions to be presented to Ministers for decision. I consider that it is important that decision-making, particularly in relation to Budget measures, is based on the best advice available and a full consideration of all the options. There is a strong public interest in protecting the policy space whilst Budget proposals are being developed.

I note that the public interest in withholding information under s35(1) is often lessened with the passage of time. I have therefore considered whether the balance of the public interest now favours disclosure in this particular case, as the policy decision was made over two years ago.

However, I am aware that there has been a legal challenge to the decision to introduce this particular retrospective measure.

<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2010/97.html&query=Huitson&method=boolean>

I consider that the information should continue to be withheld because the policy decision is currently under consideration in the Courts. Information has been and will continue to be made public in the published Decisions of the relevant Courts and the public interest in the policy information will be addressed in this way.

I have therefore concluded that the public interest favours maintaining the s35 exemption and withholding all the information within the scope of your request.

### **Section 42(1) FOIA**

The information in scope is also withheld because it engages the s42(1) exemption, another class exemption under the FOIA. This exemption applies to information for which a claim to legal privilege could be maintained. Having reviewed the information held, I am satisfied that the exemption is engaged.

### **Public Interest considerations**

Mr Sharpe has set out public interest arguments for and against disclosure of legally privileged information and I agree with his conclusion that the public interest favours withholding the information in this case. I am satisfied that the wider public interest is best served by ensuring that those seeking legal advice have full confidence that their discussions, communications and final advice are received in full confidence.

A further consideration which strengthens the public interest in not disclosing the information, thereby protecting client / lawyer relationships, is the fact that the issues are still current and subject to on going litigation.

### **Appeal Process**

My conclusion is that the requested information was correctly withheld under the FOIA. As previously advised, if you are not content with the outcome of this review of the handling of your request under the FOIA, 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

Teresa Chance