

Mr Gary Tinker

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

25 August 2021

Dear Mr Gary Tinker,

Refs: IR2021/15977  
FOI2021/06725

## Freedom of Information Act 2000 Internal Review

Thank you for your email dated 9 June 2021, requesting an internal review of our response dated 8 June 2021 to your information request made under the Freedom of Information Act 2000 (the FOI Act), under our reference: FOI2021/06725

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 20 February 2021, you made the following request under the FOI Act:

*"Thank you for your latest response to my FOI, but it does not answer the question. By law, HMT, as a public sector organisation must ensure that contractors, contingent labour, off-payroll resources are not using tax avoidance schemes. This includes ensuring that the third-party agency supplies resources that are compliant with that regulation. I have provided links in my previous request that point out these regulations*

*I have examined the HMT annual report and can see that there are a significant number of off-payroll engagements. I can also see that HMT have sought assurance from off-payroll resources regarding their tax arrangements in years 2011/12, but it appears that such checks or assurances have not been sought other than to check IR35 status since 2017/18*

*In that respect, by law, HMT must know the answer to the question. It is not acceptable (and breaking the law) to say that HMT does not hold this information.*

*It is the law that HMT must hold this data.*

*Please provide the requested information.*

*Namely*

*The number of contractors engaged by HMT that are*

*1) currently using DR schemes*

*2) have been found to be using DR schemes in previous years*

*3) the number/name of companies that have supplied contractors using DR schemes"*

On 8 June 2021 we provided our response and explained that HM Treasury does not hold information within scope of your response. HM Treasury uses the pan Government Public Sector Resourcing framework agreement to source and procure contingent labour. This framework agreement was established in January 2018. The contractual agreements that cover this arrangement are such that contingent labour procured through this route are not paid using a disguised remuneration scheme.

To have complete visibility of the payment arrangement across a number of years between suppliers and interim workers (contingent labour) at the end of potentially multi-tiered supply chains would require access to HM Revenue and Customs' records, which is not possible for the reason we have already stated.

On 9 June 2021, 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 'Use of Contractors that have used Disguised Remuneration Schemes'.*

*I am confused and do not accept that HMT have responded correctly to this FOI request.*

*In your response on the 21/12/2020 you stated that I can confirm that HM Treasury holds some information within the scope of your request.*

*In your response on the 21/01/2021 you stated that We can confirm that HM Treasury does not hold information within the scope of your request.*

*In this latest response dated 8/6/2021 you have stated We can confirm that HM Treasury does not hold information within the scope of your request*

*So part way through this request HMT decided that it no longer had data in scope. This is quite odd, is it possible to explain?*

*You stated the following*

*"HM Treasury uses the pan Government Public Sector Resourcing framework agreement to source and procure contingent labour. This framework agreement was established in January 2018. The contractual arrangements that cover this agreement are such that no contingent labour procured through this route are paid using a disguised remuneration scheme."*

*HMRC also use the Government Public Sector Resourcing framework and identified as late as July 2020 that it was using contractors that were using tax avoidance schemes.*

*The law makes it clear that the public body must ensure that its suppliers and resources have not used avoidance schemes. It is not acceptable to hide behind the argument that only HMRC could know this.*

*However, your department should be congratulated on one level of honesty that exceeds that of HMRC in concluding that don't know means 'don't know', even if that*

*is breaking the law that HMT itself helped formulate. In comparison HMRC stated in 2018 that they did not know how many contractors had used tax avoidance schemes and from not knowing the answer stated the number to be nil. Clearly illogical. However, after several further FOI requests they finally told the truth and admitted knowing of at least 13.*

*Is it a fact then that every other public body other than HMRC is exempt from the law as formulated by HMT in 2012 on the grounds that they cannot know the answer to the question of whether their suppliers or contingent labour has or is using a tax avoidance scheme?*

*I think that HMT needs to consider sanctions on itself as it has not complied with the law that the Chief Secretary to the Treasury announced on 31/1/2012. Please state why HMT should not report itself.*

*There also remains a gap between 2016 and 2018 where HMT was engaging contingent labour and suppliers that may have been using tax avoidance schemes. I will ask one last time for HMT to confirm that it did not engage suppliers or contingent labour using tax avoidance schemes post 2016. It is worth pointing out that under section 77 of the FOIA it is a criminal offence for a person to do anything with the intention of preventing the disclosure of information pursuant to an FOI request."*

## **The Review**

I have considered the response we provided to you and whether our handling was compliant with our obligations under the FOI Act. In considering our response, there has been a thorough review of the issues you have raised and whether any information held by HM Treasury falls within the scope of your request. After careful consideration, I have concluded that our handling was compliant with our obligations under the FOI Act and as such I am upholding the original response for the reasons set out below.

The use of contingent labour in HM Treasury is based on the operational needs of the department. The responsibility for its procurement is devolved to the individual Business Group experiencing the capacity and/or capability gap. The information relating to individual placements such as, amongst other things, an approved business case, statement of requirements, IR35 assessment, individual contract with the supplier of the interim worker is retained by the individual Business Group for each assignment and not held centrally.

Where there is an identified need that has received the necessary departmental approvals, the procurement of contingent labour is required to be routed through the Department's call-off contract from the PSR framework, which is with Alexander Mann Solutions (AMS) and was established in June 2018. The contractual arrangements covering this agreement are such that interim workers procured via this route are not paid using a disguised remuneration scheme, which AMS has confirmed to be the case. However, this would not prevent individual workers engaged by HM Treasury via this route being employed elsewhere or carrying out their own trade with payment arrangements in place, which PSR would have no sight of. The same would apply to those interim workers procured through HM Treasury's call-off contract with CCS's predecessor framework to PSR (Contingent Labour One RM960) before June 2018.

HM Treasury did hold some information to enable a partial answer to your initial request dated 23 November 2020 (Ref FOI2020/42887). We were able to identify through our central contracts database that the only contingent labour working in the Treasury at that time had been procured via its PSR contract. However, after further consideration was made on receipt of your subsequent request/s we felt it appropriate to change our language to reflect that PSR was not sighted on separate working and payment arrangements that individual workers may have had in place elsewhere, as referenced above.

HM Treasury takes its legal responsibility to prevent tax avoidance in its contingent labour supply chains very seriously and remains committed to tackling those who promote and operate schemes designed to do so. The use of Treasury's Public Sector Resourcing contract is mandated in the department to source requirements and we maintain close working relations with the supplier to ensure compliance. Were we to become aware of a contractor working in HM Treasury on a temporary basis who is using a disguised remuneration scheme, we would take robust compliance action, including immediate action to terminate the engagement.

## **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