

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2013

Public Authority: HM Treasury
Address: 1 Horse Guards Road
London
SW1A 2HQ

Decision (including any steps ordered)

1. The complainant made a freedom of information request to HM Treasury for information related to the recovery of funds from the Barlow Clowes group of companies. The Treasury initially disclosed some of the requested information but for other parts of the request the information was exempt from disclosure or the cost of complying with the request would exceed the appropriate limit under section 12. The Treasury subsequently said that it was applying section 12(1) to all of the requested information.
2. The Commissioner has investigated the complaint and found that the cost of complying with the complainant's request would exceed the appropriate limit and that section 12(1) is engaged. The Commissioner requires no steps to be taken.

Request and response

3. The complainant's request concerns the so called 'Barlow Clowes affair'. Barlow Clowes was a group of companies that collapsed in 1988 following the misappropriation of investors' funds. Following a report by the Parliamentary Commissioner for Administration which criticised the Department for Trade and Industry the then Government made a decision to make substantial ex gratia payments to investors. At the same time the Government gave an assurance to Parliament to try and recover the cost of the payments. Since then successive governments have followed a policy of pursuing all claims in relation to the Barlow Clowes companies which showed any prospect of cost-effective recovery, in order to reduce the cost to the tax-payer.

4. On 7 February 2011 the Financial Secretary made a statement to Parliament effectively marking the end of government action in relation to Barlow Clowes which revealed that the government had paid £153 million in ex-gratia payments to investors. It also said that as of 19 January 2011 from the recovery of assets and the proceeds of legal action the Government had recovered £120 million and £36 million had been recovered and paid directly to investors. In total the investors, including the Government had been repaid £156.5 million, net of all costs.¹
5. On 16 February 2011 the complainant made the following request to the Treasury.

Further to the Financial Secretary's statement of February 7, 2011 please provide the following information:

- i. details of the individual payments that comprise the source of the £120 million stated to have been recovered, divided by way of a) recovery of assets, b) legal action;
 - ii. details of the individual payments that comprise the source of the £36 million repaid to investors;
 - iii. the total gross amount recovered before deduction of costs;
 - iv. the amount repaid to the government from the total paid to investors of £156.5 million;
 - v. the amount of the total costs paid in a) liquidators' fees, b) legal fees;
 - vi. copies of the officeholders reports dated February 2, 2002 to May 29, 2008 identified in response to my previous FOIA request ref 8/408 and all subsequent reports from the officeholders.
6. The Treasury responded to the request on 16 March 2011 when it explained that the cost of complying with parts 2 and 3 of the request would exceed the appropriate limit. For the remaining parts of the request it said the information was believed to fall under the section 41, section 42 and section 43 exemptions and that it needed additional time to balance the public interest. It said that a further response would be sent by 13 April 2011.

¹<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110207/wmstext/110207m0001.htm#1102071000008>

7. A substantive response was not issued until 18 August 2011. At this point the Treasury provided answers to parts 4 and 5 of the request. For the remaining information in parts 1 and 6 of the request the Treasury explained that the information was exempt from disclosure under sections 41, 42 and 43 of FOIA and it had concluded that the public interest in maintaining each exemption outweighed the public interest in disclosure.
8. The Treasury subsequently carried out an internal review of its handling of the request and after considerable delay presented its findings on 10 July 2012. It now said that it had established that the fullest set of information in relation to the requests was held by its legal advisers on its behalf. This information extended to over 800 boxes of information. Therefore, HM Treasury said that it had now concluded that section 12 would apply. Given that costs of over £600 had already been incurred in complying with the request it was satisfied that section 12 could be applied to the full set of information requested.

Scope of the case

9. On 17 August 2012 the complainant contacted the Commissioner to complain about the Treasury's decision to refuse his request.

Reasons for decision

10. At the internal review stage the Treasury indicated that the request could be refused in its entirety under section 12 of FOIA. In its response to the Commissioner's investigations the Treasury confirmed that it wished to apply section 12 of FOIA to all parts of the complainant's request.
11. Section 12(1) of FOIA provides that a public authority is not obliged to comply with a request if it estimates that the cost of complying with the request would exceed the appropriate limit. The appropriate limit is set at £600 for central government departments.
12. The costs that a public authority may take into account when producing its estimate are set out in the Freedom of Information and Data Protection (Appropriate Limit and fees) Regulations 2004 or the "the fees regulations".
13. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the costs it reasonably expects to incur in

carrying out the following permitted activities in complying with the request:

- determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
14. A public authority should calculate the time spent on the permitted activities at the flat rate of £25 per person, per hour.
15. Under section 12 a public authority may aggregate the costs of complying with two or more requests where the requests relate to the same or similar information and where the requests are made within a period of 60 consecutive days. It is important to note that multiple requests for information within a single item of correspondence are separate requests for the purposes of section 12. The consequences for this case, given that all the requests clearly relate to Barlow Clowes, are that section 12 can be applied where the Treasury estimates that the combined costs of dealing with the complainant's requests would exceed £600 (or 24 hours).
16. The public authority has explained that the fullest set of information regarding Barlow Clowes is held by solicitors who were appointed to commence legal action, advise the department and consult with the receivers of the investment funds and liquidators of the companies (known as the officeholders). The information held runs to over 800 large boxes of information as well as some information held electronically although there is no complete record in electronic form. The Treasury also holds some information but this is known to be incomplete.
17. Section 12 has been applied because of the amount and complexity of information held in relation to Barlow Clowes. The Treasury has said that for the information held by its solicitors there is no obvious way to identify which of the 800 boxes of information held will contain the requested material. The boxes are not indexed in a way that allows the easy identification of information within them. The information is not necessarily organised in a chronological order and the Treasury has been advised that it is not easy to find a specific document or set of documents, particularly if it is not known when they were sent. Furthermore, the Treasury has explained that the team working on Barlow Clowes was disbanded after the final announcement and so there is no contemporaneous knowledge which would assist its searches.

18. The Treasury has said that the cost of complying with the request would be so great because it effectively asks for all receipts obtained by the officeholders and apportioned to creditors and all recoveries achieved by the government together with all costs paid to the Officeholders and lawyers. To comply with this definitively would require it to search all of the held information.
19. By way of illustration, the Treasury argues that to deal with just one part of the request, part vi which asks for copies of the officeholders' reports, would exceed the appropriate limit. This is because the reports would be contained within the 800 boxes of information which would all need to be searched in order to answer this request. As explained, the boxes are not indexed and so would need to be searched by hand. The Commissioner had asked the Treasury to provide him with further information on the size of these boxes, the amount of information held and whether it had conducted a sampling exercise to estimate the average time needed to search the boxes. In response the Treasury explained that the boxes were 'at least the size of bankers boxes' and that it had estimated that most would hold the equivalent of over 5000 pages although the actual figure could be less or more. It said that it had not conducted a sampling exercise due to the difference in sizes of the boxes. Furthermore, the boxes were held off site at an external storage facility.
20. It has not been possible to provide a specific figure of how long the Treasury estimates it would take to comply with the request. However, the Treasury has said that it is confident that it would take over 24 hours to deal with part vi) of the request on its own. Whilst it feels that it would be able to provide some, if not most, of the information within this timeframe it has said that to provide a definitive list would exceed the appropriate limit. A public authority is not required to provide an incomplete response where section 12 is engaged.
21. The Commissioner accepts that it is difficult to provide a precise estimate of the time likely to be incurred in complying with this particular part of the request due to the fact that the boxes are of different sizes, will contain different amounts of information and so any search is unlikely to be representative. However, given the sheer number of boxes that would need to be searched, the amount of information held and the difficulty in searching for specific documents, it seems highly likely that the appropriate limit would be exceeded. Indeed with 800 boxes held, the Treasury would need to search through over 33 boxes an hour to comply with the request. In the circumstances it seems reasonable to conclude that searching for the requested information would take longer than 24 hours which may well be a conservative figure.

22. The Treasury has also explained that significant time and effort has already been expended in attempting to identify the requested information. To demonstrate this point the Treasury provided the Commissioner with a statement of charges it had received from the solicitors regarding their support with the complainant's request. From this the Treasury estimated that its solicitors had already spent over 30 hours reviewing what information is held in their archive and seeking to locate specific information falling within the scope of the requests.
23. The Treasury has provided a strong argument to show that dealing with just one part of the request would exceed the appropriate limit. Taking into account the costs that have already been incurred in complying with some parts of the requests and to locate the extent of information held the Commissioner is satisfied on balance that the costs of complying with the requests in full would exceed the appropriate limit of £600. The Commissioner is also mindful of the obvious complexity, amount of information held and the fact that the work carried out in relation to Barlow Clowes spans over 22 years. Having taken all the circumstances into account the Commissioner has found that section 12(1) is engaged.

Right of appeal

24. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

25. If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

**Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**