

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 July 2023

Public Authority: Office for Budget Responsibility
Address: 102 Petty France
London
SW11 9AJ

Decision (including any steps ordered)

1. The complainant has requested details of any preparatory work held by the Office for Budget Responsibility (OBR) that relates to the "Growth Plan 2022" delivered in Parliament on 23 September 2022, by the then Chancellor, Kwasi Kwarteng.
2. The OBR confirmed that it held one document, a note sent to the Chancellor on 6 September 2022, that it considered to be relevant to the request. However, the OBR refused to release this information, citing section 36(2)(b)(i) and (ii) – inhibition to the free and frank provision of advice and exchange of views - of FOIA.
3. The Commissioner has decided that whilst the exemption at section 36(2)(b)(i) and (ii) is engaged, the public interest favours disclosure of the requested information in this instance.
4. The Commissioner requires the OBR to take the following step to ensure compliance with the legislation.
 - Disclose the withheld information.

5. The OBR must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. On 23 September 2022, the Chancellor of the Exchequer, Kwasi Kwarteng, delivered a Ministerial Statement entitled "[The Growth Plan 2022](#)" (the Growth Plan) to the House of Commons. The Growth Plan set out details of significant tax cuts and changes to economic policies.
7. On the same date, the complainant wrote to the OBR and requested information in the following terms:

"Obviously there has been a lot of controversy about the Treasury not to seek and publish an updated OBR economic and fiscal outlook or forecast alongside today's "mini-budget".

I wonder what preparatory work has been done for such outlooks/forecast, or if any have been completed? There would be significant public interest in their release so we can properly assess today's measures. If required, I request these under freedom of information laws."
8. On 20 October 2022, the OBR issued a refusal notice to the complainant, citing section 36 of FOIA. The OBR provided its reasoning for the decision, and confirmed that it considered the public interest to favour maintaining the exemption.
9. Following an internal review, the OBR wrote to the complainant on 19 December 2022, upholding its original decision.

Scope of the case

10. The complainant has raised concerns with the Commissioner about the way their request for information has been handled by the OBR. In particular, they believe that the OBR has not properly considered the public interest test, believing this to weigh heavily in favour of the disclosure of the requested information.
11. Whilst the Chancellor did not commission the OBR to produce an updated economic and fiscal forecast for publication alongside his Growth Plan, the OBR confirmed in its internal review response that it had proactively provided him with a "draft forecast" on his first day in

office on 6 September 2022. It is the information contained within this document that the OBR has identified as being relevant to the complainant's request.

12. The OBR has advised both the complainant, and the Commissioner, that it considers the withheld information to be exempt from disclosure under section 36(2)(b)(i) and (ii) of FOIA.
13. The Commissioner will therefore decide whether the OBR is entitled to rely on section 36 of FOIA as its basis for refusing to disclose the information within the scope of the complainant's request.

Reasons for decision

Section 36 - effective conduct of public affairs

14. The OBR has said that it has refused the request under section 36(2)(b)(i) and (ii), which provides that information can be withheld if, in the reasonable opinion of the qualified person (QP), disclosure under FOIA would, or would be likely to inhibit:

“(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purpose of deliberation.”

15. The Commissioner is satisfied that the Chair of the OBR is authorised as the QP under section 36(5) of FOIA.
16. The OBR has provided evidence that, upon receipt of the request, it sought the advice of the Chair, in their position as QP; the Chair was provided with a copy of the withheld information, and details which supported the application of section 36 of FOIA, in order to assist them with their decision.
17. On 19 October 2022, the QP confirmed that they considered that section 36 was engaged for the reasons set out in the OBR's submissions, and that the public interest favoured maintaining the exemption.
18. When determining whether the QP's opinion was a reasonable one, the Commissioner takes the approach that if the opinion is in accordance with reason and not irrational or absurd - in short, if it is an opinion that a reasonable person could hold - then it is reasonable.

19. The OBR has said that the withheld information formed part of an ongoing process, and that it provided input into subsequent rounds of the process which led to the publication of the forecast on 17 November 2022, alongside the Chancellor's Medium-Term Fiscal Plan.
20. The OBR has also said that the process of free and frank exchange of information with the Treasury is key to the design of a process in which the OBR, as an independent forecaster, is involved. The Treasury shares policy details with the OBR prior to publication so that they can be included in the final forecast and the OBR shares information on the forecast for the same purpose. It argues that publishing elements of these important interactions would be detrimental to both departments, and more widely to the transparency of the process.
21. The QP said that their opinion was that the publication of draft and incomplete forecasts that are provided to the Chancellor in order to develop policy that is simultaneously incorporated into a final forecast, would inhibit the OBR's ability to engage in free and frank exchanges with policy makers in future forecasts. In addition, if the iterative nature of the process was damaged as a result of disclosure, then this would lead to less informative forecasts for the policy making process and for the wider public.
22. The OBR has confirmed that it is the QP's opinion that the disclosure of the requested information "would" inhibit the free and frank provision of advice and also the free and frank exchange of views for the purpose of deliberation.
23. The Commissioner accepts that the QP's opinion is one that a reasonable person might hold, and therefore finds that section 36(2)(b)(i) and section 36(2)(b)(ii) are engaged.
24. The Commissioner has gone on to consider the associated public interest test.

Public interest test

The complainant's position

25. The complainant has said that there is a significant public interest in the disclosure of the requested information, and that given the exceptional circumstances of the Growth Plan delivered by the Chancellor on 26 September 2022, the withheld information should be released.
26. The complainant argues that refusing to release the forecast "sets a dangerous precedent" where Chancellors can hold significant fiscal events whilst choosing not to take into account, or publish, OBR forecasts.

27. The complainant states that there is an expectation that OBR Reports are published and laid before Parliament, to enhance transparency and the credibility of economic and public finance forecasts, and a failure to release this information contradicts these principles.

The OBR's position

28. The OBR states that, in this instance, it had started preparations for the forthcoming fiscal event before being commissioned to do so as it had expected that a forecast would need to be published quickly once a new Chancellor had been appointed. It states whilst this proactive step was a unique approach, it assumed that this preparation would be an initial forecast round, even without the formal commission having been received from the Chancellor.
29. The OBR argues that the fact that it sent formal correspondence to the Chancellor demonstrates that it considered that the forecast note would become the start of an official forecast process; it considers it to have formed the first round of the process that led to the publication of its completed forecast on 17 November 2022, and this is confirmed in the timetable of events which it published within that forecast.
30. The OBR has said that if there was any possibility that information such as that contained within the forecast notes could be published, it would feel unable to send market and budget sensitive material in draft forecasts to the Treasury in their current form. This would damage the effectiveness of the process, which would not be in the public interest.
31. The OBR states that the process for producing its forecasts for the budget relies on the OBR and Treasury working in tandem in an iterative process of information exchange; the OBR claims that inhibiting this exchange of information in the build up to budget and other fiscal events would effectively make the current model unworkable.
32. The OBR has also advised that the release of incomplete and misleading forecasts would reduce the standing of the final complete forecasts that are published; the OBR claims it would add multiple layers of confusing information that it would not be able to explain or reconcile across iterations.
33. The OBR has said that its ultimate aim is to bring together a detailed, internally consistent, forecast which fully describes the changes and trends relevant to that forecast. It argues that the confidence in the quality of the final forecast would be diluted, if it were forced to publish information which it could not readily explain, and that this would be damaging to the effective operation of fiscal policy as intended by Parliament, and would not be in the public interest.

34. The OBR states that it considers that there is a strong public interest in maintaining a functioning budget process with the involvement of the OBR as an independent forecaster. It has said that it is key to note that the withheld document does not include any OBR assessment of the potential economic and fiscal impact of the Growth Plan.
35. The OBR goes on to say that its assessment of the Growth Plan was published in its 17 November 2022 forecast, as it had anticipated would be the case at the time that it received the FOIA request.
36. The OBR has said that it considered that the balance of the public interest arguments in favour of publication were outweighed by those against disclosure in this instance. It states that the damage to future forecast processes would not be in the public interest as it would be likely to lead to reductions in the quality of the policy making process, a less informative forecast, and consequently a reduction in the reliability and trust in the UK's fiscal framework.

The Commissioner's finding

37. In considering complaints regarding section 36, where the Commissioner accepts that a reasonable opinion has been expressed by the QP that prejudice or inhibition would, or would be likely to, occur, he will go on to consider the severity, extent and frequency of that prejudice or inhibition in forming his own assessment of whether the public interest favours disclosure.
38. It should be noted that, when carrying out the public interest test, the OBR should have considered any relevant factors that existed up to 20 October 2022 (the date of its response).
39. The Commissioner considers that the OBR has presented some strong arguments in support of the public interest in protecting the integrity of the process. He accepts that it would not be in the public interest if the OBR was not able to perform its functions effectively, and as statute intended.
40. Furthermore, the Commissioner does not consider it to be unreasonable to assume that any "draft" forecast document prepared by the OBR is likely to include an up-to-date analysis of whether the Government is meeting its fiscal mandate at that time. Therefore, he is mindful that the premature release of such data, in circumstances where the Government did not request the formulation of such information, or expect it to be released, could potentially cause some damage to the relationship between the OBR and the Government, which would not be in the public interest.

41. The Commissioner notes that the OBR's arguments, in part, focus on the potential risk of inhibition in the exchange of information, and the impact that premature release of information would have on the complete and published forecast.
42. However, there had been no exchange of information as part of the forecast process in this instance; the process had not got beyond the OBR submitting an initial forecast to the Chancellor based only on the information it held at that time. Given this, the Commissioner considers the severity of the damage that could potentially be caused to the integrity of the process as a result of disclosure of the requested information to be somewhat limited.
43. Furthermore, it is the Commissioner's view that officials involved in the formulation of the "draft" forecast were performing their duties as required; the Commissioner considers it reasonable to expect that these officials will carry out their roles robustly, whilst being fully aware of FOIA and accountability.
44. In addition, the [Budget Responsibility and National Audit Act 2011](#) requires the OBR to perform its main duty of examining and reporting on the sustainability of public finances "objectively, transparently and impartially." Given the OBR's (and the Treasury's) statutory obligations, the Commissioner considers the risk of future inhibition in the exchange of information between parties as a result of the disclosure of the requested information to be low.
45. The Commissioner is also not persuaded that the disclosure of the information contained within the withheld document might cause confusion when considered against subsequent published forecasts. The Commissioner's view is instead that it is reasonable to expect a reader of the withheld information to recognise the impact of the Growth Plan on OBR's work post 23 September 2022.
46. The Commissioner notes that the OBR's internal review response to the complainant says that there have been a number of large fiscal policy announcements in response to various crises over the years which have not been accompanied by a forecast. The OBR goes on to say that its role in the transparency of fiscal policy announcements relates to how they are presented in the economic and fiscal forecasts, and if the interim stages of the forecast were released throughout the process, then this would be detrimental to its work.
47. Turning to the factors in favour of disclosure of the withheld information, in the Commissioner's opinion, the circumstances that applied at the time of the request and the OBR's response to the request are highly relevant to the balance of the public interest in this instance, both in

terms of the likelihood of the OBR dealing with anything comparable in future, and in terms of the weight of the public interest in the content of the withheld information.

48. At the time that the Chancellor delivered his Growth Plan (and the time of the request), there had only just been a change in prime minister and a cabinet reshuffle (5 September 2022). The Chancellor, having been in post for 17 days, announced proposals that included major changes to the UK tax system; the Growth Plan detailed substantial taxation changes, and also reforms in areas such as the Government's Energy Price Guarantee, Investment Zones, the acceleration of major infrastructure projects, private investments and Universal Credit.
49. The Chancellor claimed implementation of the Growth Plan would release, "the huge potential in the British economy by tackling high energy costs and inflation and delivering higher productivity and wages."
50. The Growth Plan detailed significant economic and fiscal policy decisions. Indeed, the Chancellor said that:

".....the tax cuts and reforms I've announced today – the biggest in generations – send a clear signal that growth is our priority."
51. The Chancellor's decision not to commission a forecast to accompany the Growth Plan was regarded as unexpected by some. On 26 August 2022, the Chair of the Treasury Committee, when welcoming the decision already made by the OBR to start preparing a forecast for "any potential emergency fiscal event in September", had stressed the importance of major tax changes and significant fiscal measures being announced alongside an OBR forecast, saying such forecasts "provide transparency on the health of the nation's finances to Parliament, the public and critically to international markets, upon which the UK substantially relies on its borrowing."
52. The OBR itself has already acknowledged that this was a unique situation; it confirms that its decision to proactively send the note to the Chancellor on 6 September 2022, was itself an unusual step to have taken, and was done so on the basis that it was anticipated that a forecast would be commissioned to accompany any financial statement planned for the end of September 2022.
53. There was an immediate, unprecedented, and overwhelmingly critical reaction to the Growth Plan from commentators, the financial markets and the public; concerns were raised that the decision to cut taxes would have a severe and long lasting negative impact on the economy, financial markets and public spending. Think Tanks such as the Institute for Fiscal Studies (IFS), and the Resolution Foundation, estimated that

the government debt would be significantly increased and put on an "[unsustainable rising path](#)"(IFS statement) as a result of the proposals.

54. Following the delivery of the Growth Plan, the Chancellor's decision not to commission a forecast to be published alongside such significant changes to the tax system attracted widespread criticism.
55. By the time of the OBR's response to the request, the Chancellor who announced the Growth Plan was no longer in post. Amongst the impacts of the Growth Plan were a major reduction in the value of sterling and an intervention in the bond market by the Bank of England.
56. In the Commissioner's view, the withheld information, whilst prepared prior to the announcement of the Growth Plan, is relevant to the context in which that plan was developed and announced. Given the reaction and impact of the Chancellor's actions, the Commissioner considers increased public knowledge about the context of the Growth Plan to be an exceptionally weighty public interest in favour of disclosure.
57. The Commissioner considers the OBR to have an important part to play by providing transparency in the Government's policy process; it sets out an independent forecast which is not subject to any potential manipulation and provides the public with a clear and unbiased forecast which can then be considered alongside the Government's fiscal and economic proposals.
58. The [Charter](#) for Budgetary Responsibility (section 4.8) sets out the following:

"The establishment of the OBR enhances the transparency and credibility of the government's official economic and public finances forecasts, in part, through the publication of more information than has been made available to the public previously."
59. It is the Commissioner's view that the disclosure of the requested information aligns with the role and purpose of the OBR and supports the integrity of the system and the processes that are in place, rather than damages them.
60. The decision not to commission a forecast to run alongside the Growth Plan meant that the transparency of the decision-making process, and the public's ability to scrutinise and analyse the very significant policy measures that had been introduced, was significantly reduced.
61. Furthermore, if a forecast had been commissioned, and the Chancellor had then chosen to reject the OBR's predictions (which he would have been permitted to do), he would have been required to provide his

reasoning for doing so to Parliament. This also would have provided for further transparency in the process.

62. The Commissioner has also considered the timing of the request; it was after the Chancellor had delivered his Growth Plan, and therefore, any possibility that he might change his decision and commission a forecast before announcing his proposals, had been removed. Furthermore, at that time, there was uncertainty as to when the next forecast would be made available. Initially, the Chancellor had said that this would be sometime before the end of the calendar year. The date which was subsequently proposed was also then changed a number of times.
63. The Commissioner considers that some weight can be attached to the OBR's argument that the public interest in disclosure is weakened by the fact that the forecast that has been withheld does not take account of the measures that were announced by the Chancellor on 23 September 2022. However, the Commissioner still considers the withheld information to form an important part of the series of events that occurred in this extraordinary time period of government; the nationwide impact of those events means that there is an exceptionally weighty public interest in favour of disclosure of the withheld information.
64. The Chancellor was given an assurance that the OBR would be in a position to provide a final forecast to accompany any financial statement planned for the end of September 2022. Given the Chancellor's decision not to commission such a forecast, the Commissioner considers the value in the disclosure of the requested information to be significantly increased, as it would allow the public to understand, and provide context to, the events that took place.
65. The Commissioner fully accepts that there is a strong weight attached to the public interest in preserving the integrity of certain processes and ensuring that there is confidence in a safe space which allows for free and frank discussions to take place where important policy decisions are to be made.
66. However, the Commissioner is not persuaded that disclosure in this instance would undermine the fundamental principles of the processes that are in place, and which provide for good decision making. He also considers it relevant that the circumstances surrounding the Growth Plan are unlikely to recur.
67. It is therefore the Commissioner's decision that, whilst this is a finely balanced case, the weight in the public interest in the disclosure of the withheld information is so significant that it outweighs the strong public interest arguments in support of maintenance of the exemption. His

conclusion is, therefore, that the public interest in the maintenance of the exemption does not outweigh the public interest in favour of disclosure. At paragraph 4 above, the OBR is now required to disclose the requested information.

Right of appeal

68. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

69. 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.
70. 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

Suzanne McKay
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