

Freedom Of Information Act 2015

DECISION NOTICE

Section 42

Decision Number: DN 2026_14

Public Authority: Treasury

Address: 3rd Floor, Government Offices
Bucks Road
Douglas
IM1 3PZ

Decision Date: 16 June 2026

Summary

A Freedom of Information request was submitted to the Treasury, asking for all information relating to the rental eligibility criteria and allocation policies for the Former Nurses' Home (Thie Clag).

The Department requested some clarity and suggested rewording the request, owing to the information likely being held by Manx Development Corporation (MDC) (which is not subject to Schedule 1 of the FOI Act) rather than by Treasury. The Applicant disagreed, stating that as Treasury held 100% of shares within MDC that it is "*expected*" that Treasury would have full access to, and knowledge of the activities within MDC. Treasury formally responded to the request, stating that the information was not held, and the Department maintained their position in the internal review.

The Information Commissioner reviewed the case and found that the Department should have considered that some of the located information that was shared during the course of this review, was within the scope of the request and should be properly assessed. The Treasury Minister's position as chair of the Brownfield Regeneration Steering Group, as

suggested by the Report on the Establishment of the Manx Development Corporation, suggests that further searches may be required with this information in mind.

As a result, the Department is required to reprocess the request.

Background

1. On 06 August 2025, the Applicant (Applicant) requested the following information from the Treasury (the Authority):

“The following requests for information relate to the reported public investment of over £11 million in the refurbishment of the former nurses' home in Douglas, known as 'Thie Clag'. The refurbishment was carried out by the Manx Development Corporation, for which the Treasury is the sole shareholder, acting on behalf of the Isle of Man public.

- 1) *Please provide copies of the rental eligibility criteria, allocation policies, and any related documentation applicable to current and future tenants of the former nurses' home in Douglas, known as "Thie Clag".*
- 2) *Please explain how these criteria and policies are applied in practice during the rental allocation process?”.*

2. The Authority contacted the Applicant on 08 August 2025, stating the following:

“An initial assessment of your request has indicated that we are unlikely to hold the information you are interested in. For this reason, we are likely to need to apply a practical refusal reason to your request under section 11(3)(a) of the Act (information not held).

The reason for this is the information you have requested is not held by Treasury, because it appears that is operational information that Treasury do not have an involvement with and would more than likely be held by the Manx Development Corporation.

Taking the information provided in this notice into account, please can you confirm how you wish to proceed with your request? You may wish for us to proceed with your request as submitted, however, I would ask you to note the likelihood that we will need to refuse it on the grounds that a practical refusal reason applies. Alternatively you may wish to rephrase your request or you may wish to withdraw your request.

We will not be able to process your request until this information is received and you have 28 days from the date of this notice in which to respond. Should you respond after this time Treasury can refuse to provide you with the information requested”.

3. The Applicant responded, asking to proceed with the request, but changed the wording to state:

"This request is for any documents, reports, correspondence, briefing notes, shareholder communications, or other records held by Treasury which relate to rental eligibility criteria,

allocation policies, and their application for the former nurses' home ('Thie Clag'), whether created by the Manx Development Corporation or by Treasury itself. This ensures the request remains firmly within FOIA scope and relates only to information actually held by Treasury"

4. On 26 August 2025, the Authority responded to the request, applying a practical refusal reason stating that the information was not held by Treasury. The Applicant was not satisfied with the response and asked that the Authority undertake a review of the decision. The Authority maintained their position in their response on 17 September 2025.
5. On 19 September 2025, the Applicant made their application for review by the Information Commissioner. The Casework Officer was satisfied that the Applicant had made a valid request, had sought a review by the Authority and, having received a response, had exhausted the complaints procedure provided by the Authority.

Analysis

6. Under section 42(1) of the Freedom of Information Act¹ (FOIA) the Information Commissioner is required to decide on whether a public authority has responded to a request in accordance with the requirements of part 2 of the legislation or whether it was justified in refusing to provide the information requested.
7. The Information Commissioner formally sought the withheld information from the Authority. This request afforded the Authority the opportunity to demonstrate its compliance with the provisions of the FOIA. The Authority responded with the requested information; the case was considered.
8. The Authority appeared to use the clarification process to suggest that the information was unlikely to be held, despite a lack of evidence that a reasonable search had been conducted at that time. The Information Commissioner recognises that the Authority was attempting to advise and assist the Applicant, in order to ensure their request was clarified or re-framed to give them a better chance of receiving some of the requested information. However, the final response focused solely on the clarified request and failed to address the original wording where the Authority claimed the information was unlikely to be held.
9. While the Applicant was informally told some data was not held when the Authority sought clarification, a formal refusal under section 11 of the FOIA (practical refusal reason) should have been issued for all information not held, for clarity and transparency.
10. The Authority is reminded that, in accordance with section 4.4 of the Council of Ministers Freedom of Information Act 2015 Code of Practice² (the Code), clarifying the request should be used where *"an Authority requires more information from the Applicant to identify and locate the information being sought"*, and not an opportunity to advise the Applicant where information is not held, or may not be held.

¹ https://legislation.gov.uk/cms/images/LEGISLATION/PRINCIPAL/2015/2015-0008/2015-0008_19.pdf

² <https://www.tynwald.org.im/spfile?file=/business/opqp/sittings/Tynwald%2020142016/2015-GD-0068.pdf>

11. As part of this review, the Authority provided the Information Commissioner with details of the searches undertaken, which included emails to various staff members who may have held information relating to the request. Upon receipt of the internal review, the Authority asked each staff member to clarify:
- The areas searched.
 - The search terms used.
 - Anywhere else that this information would be held.
12. Upon review of the responses from staff members, the Information Commissioner observed information that the Authority had deemed as “*out of scope*” of the request. However, the Information Commissioner found that some reviewed information was within the request's scope, and indicated that further relevant information must exist to support the discussions and answers provided. The Authority did not demonstrate why they found the located information to be out of scope.
13. In their response, the Authority stated that the information was not held, and that it was likely to be held by Manx Development Corporation (MDC). The Information Commissioner notes that MDC are not currently included in Section 1 of the FOIA.
14. According to the Report on the Establishment of the Manx Development Corporation³ (the report), “*the Treasury Minister will be the sole shareholder*”. The report proposes that, for accountability, MDC should establish a sub-committee of the Council of Ministers, and that the Treasury Minister should chair the Brownfield Regeneration Steering Group (BRSG).
15. The Business Model, in accordance with the report states that: “*Detailed business cases will be developed by the MDC for consideration and approval by the BRSG, including the necessary financial arrangements*”. The report outlines that all quarterly meetings should be recorded in line with minute taking guidance, and the agenda compiled with the approval of the Treasury Minister.
16. Owing to the information provided as part of this review, and the information within the report on the establishment of MDC, the Information Commissioner deems that, based on the balance of probabilities, that the Authority is likely to hold some information relating to the request, including the referenced meeting minutes and/ or agendas. The Information Commissioner considers it likely that further relevant information exists within the Treasury Minister's records as Chair of the BRSG.
17. The Information Commissioner advises the Authority to properly consider the request when deeming whether information is out of scope.
18. The Scottish Information Commissioner considered a case⁴ whereby a public authority had deemed that information had been out of the scope of the request. The review found: “*The Commissioner regards a significant section of one of the emails under consideration as containing environmental information. She does not accept that this information*

³ <https://www.tynwald.org.im/spfile?file=/business/opqp/sittings/20182021/2021-GD-0012.pdf>

⁴ <https://www.foi.scot/decision-0422013>

becomes any less environmental in character by virtue of the circumstances in which it came to fall within the scope of Mr Ackroyd's request."

19. The UK Information Commissioner's Office (ICO) guidance⁵ provides direction to public authorities considering whether information is held and suggests that the first step should be:

"to decide if you 'hold' the information for the purposes of FOIA – you need to establish if there is an 'appropriate connection' between the requested information and your role and functions as a public authority".

Decision

20. The Information Commissioner must decide whether the Authority was justified in refusing to give the information requested.
21. In this instance, the Information Commissioner's decision is to uphold the Applicant's complaint as the Authority did not sufficiently consider the eligibility of some of the information held within the scope of the request nor appeared to document why they considered this information to be out of scope.

Reasons for decision

22. **Inappropriate application of practical refusal reason:** The Authority provided some small excerpts of information that they explained had been outside of the scope of the request. The Information Commissioner suggests that the requested information may fall within the original scope of the request regarding the application of section 11. Given the Treasury Minister's role as Chair of the Brownfield Regeneration Steering Group, the Information Commissioner requires the Authority to conduct and document a comprehensive search to definitively establish whether any additional information is held, particularly BRSG meeting minutes and agendas.
23. **Omission of the initial request:** To comply with FOIA transparency standards, the Authority must address every element of a request in its response. If certain information is not held, this should be explicitly stated in a formal refusal. This obligation remains even if the Applicant provides clarification; both the original and clarified parameters should be accounted for when it is asserted that information is not held.

Action required

24. Accordingly, the Information Commissioner must consider what steps should be taken by the public authority. In doing so, the Information Commissioner bears in mind the purpose of the FOIA set out in section 3 which refers to information being available to the public to promote the public interest and sets out exceptions to the right of access as necessary to maintain a balance with rights to privacy, effective government and value for the taxpayer.

⁵ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/information-you-hold-for-the-purposes-of-foia/>

25. The Information Commissioner has a duty under section 54 to promote good practice with respect to the performance of the functions of a public authority, including compliance with the FOIA and the Code.
26. The Information Commissioner requires the Authority to either disclose the information requested to the Applicant or provide the Applicant with a further refusal notice in accordance with sections 17 and 18.
27. The Authority is required to complete the above steps within 30 days of the date of the Decision Notice and furnish the Information Commissioner with the updated response.
28. If the Authority, after reviewing the requested information, decides to issue a refusal notice, that notice must include a clear rationale. The Applicant then has the right to apply for a review of that decision by the Information Commissioner under section 42.
29. Under section 42, the Applicant has the right to seek a review of this decision by the Information Commissioner. This application can be made directly to the Information Commissioner, regardless of whether an internal review has been conducted.

Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to appeal to the High Court on a point of law only. Any such appeal must be made within 28 (calendar) days after the date of this Decision Notice. Further information about the Appeal process is available on the General Registry's web site at:

<https://www.courts.im/courtprocedures/AppealsCivil/>

An appeal should be filed at or sent to:

The Court Office
Isle of Man Courts of Justice
Deemsters Walk
Bucks Road
Douglas
Isle of Man
IM1 3AR

Enforcement

In Decision Notices where the Information Commissioner sets out what action they require the public authority to take, in the event a public authority fails to comply with this decision and any associated action required, the Information Commissioner has the right to certify to the High Court that it has failed to comply. The Court must inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Publication

The Information Commissioner will publish this Decision Notice five working days after it has been issued to the Applicant and the Authority.



Dr Alexandra Delaney-Bhattacharya

Isle of Man Information Commissioner

16 June 2026