

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 November 2013

Public Authority: Royal Armouries
Address: Royal Armouries Museum
Armouries Drive
Leeds, LS10 1LT

Decision (including any steps ordered)

1. The complainant has requested information relating to the suspension and subsequent departure of Jonathon Riley as Master of Armouries. Royal Armouries refused to provide some of the requested information under section 40(2) of the Freedom of Information Act 2000 (FOIA) by virtue of section 40(3)(a)(i) FOIA and some under section 22 FOIA.
2. The Commissioner's decision is that Royal Armouries correctly withheld the requested information under section 40(2) by virtue of section 40(3)(a)(i) FOIA and section 22 FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 6 September 2012 the complainant made the following request for information under the FOIA for:

"1) The information held on the irregularities, potential irregularities or any other conduct-related issues relating to Jonathon Riley connecting to his suspension and subsequent departure as Master of the Armouries. Specifically this would be the information on the irregularities, potential irregularities or other conduct-related issues involved .

It is likely that the best way to provide this would be in the form of any reports drawn up detailing the issues and I would like copies of any such reports.

These may have been reported to the audit committee or any such similar part of the management structure or in reporting to the trustees.

2) I would also like a copy of any final report drawn up on the irregularities, potential irregularities or other conduct-related issues and any other document which relates specifically to the conclusion of the investigation.

Again this may have been reported to the relevant part of the management structure, to the trustees and/or to the DCMS.

3) Please provide the information on any payments made to Lt-Gen Riley on his departure and how these payments were arrived at by the Royal Armouries, ie detailing whether it was a year's salary or payments in lieu of pension contributions and so on."

5. On 21 December 2012 Royal Armouries responded. It said that the information requested at parts 1 and 2 of the request was exempt from disclosure under section 40(2) FOIA. It provided the complainant with some information in relation to part 3 of the request, but refused to provide him with the contractual remuneration paid to Dr Riley on his retirement under section 22 FOIA as it said that this was due for future publication.
6. The complainant requested an internal review. Royal Armouries sent the outcome of its internal review on 13 March 2013. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 14 March 2013 to complain about the way his request for information had been handled, in particular that the information he had requested had been withheld.
8. The Commissioner has considered whether Royal Armouries was correct to withhold the requested information under section 40(2) by virtue of section 40(3)(a)(i) FOIA and section 22 FOIA.

Reasons for decision

9. Under section 40(2) by virtue of section 40(3)(a)(i), personal data of a third party can be withheld if it would breach any of the data protection principles to disclose it.
10. Personal data is defined in section 1(1) of the Data Protection Act (DPA) as:

“data which relate to a living individual who can be identified –

- (i) from those data, or
- (ii) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.”

11. The two main elements of personal data are that the information must ‘relate’ to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
12. The information withheld under section 40(2) FOIA is information relating to the suspension and subsequent departure of a named person. This is information which relates to a living individual from which they could be identified. Royal Armouries has also explained that some of the withheld information would fall within the definition of sensitive personal data. A further explanation is contained at paragraph 1 in the Confidential Annex attached to this Notice.
13. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of FOIA are met. The relevant condition in this case is at section 40(3)(a)(i) of FOIA, where disclosure would breach any of the data protection principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first data protection principle, which states that “Personal data shall be processed fairly and lawfully”. Furthermore at least one of the conditions in Schedule 2 should be met. In addition for sensitive personal data at least one of the conditions in Schedule 3 should be met.

Likely expectation of the data subject

14. The Royal Armouries has explained that the data subject would not have expected the information requested at parts 1 and 2 of the request to be disclosed into the public domain. Royal Armouries explained that the requested information relates to an internal disciplinary process. It cited two previous cases which involved similar requests.
15. It explained that in *Rob Waugh v Information Commissioner and Doncaster College* (EA/2008/0038; 29 December 2008), it was said that, "there is a recognised expectation that the internal disciplinary

matters of an individual will be private. Even amongst senior members of staff there would still be a high expectation of privacy...".

16. It explained that in Decision Notice FS50463532 (dated 5 December 2012), it was said that, "In considering whether it would be fair to disclose the withheld information, the Commissioner's investigation has taken into account the fact that disclosure under the FOIA is effectively an unlimited disclosure to the public at large, without conditions. Fairness to the named individual must therefore be considered when deciding whether or not the information requested is suitable for disclosure." In making his decision the Commissioner took into consideration "the fact that the withheld information relates to an incomplete internal investigation" and concluded that "the reasonable expectations are a persuasive factor in indicating that the release of information would be unfair... and that disclosure of the dispute information would have contravened the fairness element of the first data protection principle and that S40(2) of FOIA was therefore correctly engaged."
17. The Royal Armouries provided further explanation in support of its position, contained at paragraphs 2-4 in the Confidential Annex attached to this Notice.

Would disclosure cause damage and distress to the data subject

18. The Royal Armouries said that disclosure of the information requested at parts 1 and 2 of the request would cause damage and distress to the data subject.
19. The Royal Armouries believe that disclosure of the requested information would cause unwarranted, substantial and irreparable harm to the data subject's personal and professional reputation and would cause him and his family considerable distress. This is because the requested information relates to an incomplete internal investigation.
20. Further arguments are contained at paragraph 5 of the Confidential Annex attached to this Notice.

The legitimate public interest

21. The Commissioner considers that there is a legitimate public interest in disclosure of information which demonstrates that public authorities are dealing with internal disciplinary matters efficiently and effectively. In this case the individual was a very senior member of staff which increases the legitimate public interest in disclosure. However the internal investigation was not completed and the Royal Armouries have provided significant evidence that the data subject would not have

expected that the information requested at parts 1 and 2 of the request would be disclosed into the public domain. Furthermore it provided evidence that disclosure would cause damage and distress to the data subject. On balance the Commissioner considers that the legitimate public interest in this case would not override the interests of the data subject.

22. The Commissioner considers that it would be unfair to disclose the requested information and section 40(2) by virtue of section 40(3)(a)(i) FOIA was applied correctly in this case. Despite the fact that much of the requested information would also constitute sensitive personal data the Commissioner has not gone on to consider whether a Schedule 3 condition could be met in this case as he has found that it would be unfair to disclose the requested information anyway.

Section 22 – Information intended for future publication

23. Section 22 of the FOIA says that information is exempt if, at the time a public authority receives a request for it:
- the public authority holds it with a view to its publication;
 - the public authority or another person intends to publish the information at some future date, whether determined or not; and
 - in all the circumstances it is reasonable to withhold the information prior to publication.
24. In reviewing the Royal Armoury's application of this exemption, the Commissioner has considered each of the above requirements and reached the following conclusions. He has also referred to his own guidance¹.

Information held at the time of the request

¹ Published on the ICO website
here:http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/section_22_information_intended_for_future_publication.ashx

25. The Royal Armouries confirmed the information requested at part 3 of the request was held in its initial response. The Commissioner is satisfied that the information was held at this time.

Intention to publish at the time request received

26. This exemption only applies when the information is held with a view to publication at the time the request for it is received. In this case the Royal Armouries has explained that it is required to make a statement of account pursuant to Schedule 1, Part III, paragraph 29 of the National Heritage Act 1983. The Accounts are approved by the National Audit Office and are then reviewed by the financial management team at the DCMS and Secretary of State for Culture, Media and Sport. After the review process has been concluded they are signed by the Museum's Accounting Officer and the Chairman of the Board of Trustees, and the by the Comptroller and Auditor General before being formerly laid before Parliament. This process can take some time. The details of the remuneration paid to Dr Riley appeared in the Annual Report and Accounts for the Year Ended 31 March 2013 which were published on 19 July 2013 and made available on the Museum's website shortly afterwards.

With a view to publication

27. The Commissioner interprets the words in section 22 of 'with a view to' to indicate an intention has been made to publish or at the very least that the information is held in the settled expectation that it will be published.
28. Publication requires the information to be generally available to the public. It is not enough if the intention is to make it available to a restricted audience. If during the course of the preparation of the information for publication some material will be redacted, section 22 will not apply to the redacted information. This is because the public authority will no longer hold the information with a view to publication in the future.
29. In this instance, the information is intended to be published in the annual accounts and made available on the Museum's website.

At some future date (whether determined or not)

30. The publication date does not need to be definite for the exemption to apply. As long as a decision has been made that the information requested will be published at some time in the future or there is a settled expectation that this will happen, the exemption can be considered.

31. In this case the Royal Armouries has confirmed that the information requested at part 3 of the request has now been published.

Reasonable in all the circumstances to withhold the information prior to publication

32. In order to engage section 22 of the FOIA, a public authority must first determine whether or not it is reasonable in all the circumstances to withhold the requested information prior to publication before considering the public interest test.
33. In considering the reasonableness of withholding the information, the Commissioner's guidance states that authorities should first give separate consideration to whether or not such an approach is "...sensible, in line with accepted practices, and fair to all concerned to withhold the information prior to publication."
34. The Commissioner's guidance also advises that, in considering what is reasonable in all the circumstances, authorities may also wish to consider:
- Is it the right decision to manage the availability of the information by planning and controlling its publication?
 - Is it necessary to avoid any advantage that would be obtained by the requester in obtaining the information prior to general publication?
 - Does the timetable properly require internal or limited consideration of the information prior to its public release?
35. The Commissioner considers that it is reasonable to withhold the information requested in this case until the accounts are fully approved by all of the bodies involved in this process.
36. As the Commissioner considers that it would be reasonable in all of the circumstances to withhold the information prior to publication, he has gone on to consider the public interest arguments in this case.

Public interest factors in favour of disclosure

37. There is a public interest in promoting accountability and transparency in decision making particularly in relation to the expenditure of public money.

Public interest factors in favour of maintaining the exemption

38. It would not be in the public interest to disclose official accounts until they have been fully approved by the bodies involved in this process.

Balance of the public interest arguments

39. Taking all of the above into account, the Commissioner considers that the public interest arguments in favour of disclosure are outweighed by the public interest arguments in favour of maintaining the exemption.
40. The Commissioner considers that section 22 was correctly applied in this case.

Right of appeal

41. 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

42. 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.
43. 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