

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 April 2015

Public Authority: The Royal Mint
Address: Llantrisant
Pontyclun
CF72 8YT

Decision (including any steps ordered)

1. The complainant has requested information from The Royal Mint about UK and overseas retail trade sales of commemorative coins. The Royal Mint has disclosed some information falling within the scope of the request and in respect of the remainder of the information has refused to disclose it citing FOIA section 43 – Commercial interests.
2. The Commissioner's decision is that The Royal Mint has correctly engaged the exemption at section 43. He notes however that some of the information was disclosed outside of the statutory time limit and accordingly The Royal Mint has breached section 10 of the FOIA. The Commissioner does not require The Royal Mint to take any further steps.

Request and response

3. On 2 August 2014, the complainant wrote to The Royal Mint and requested information in the following terms:

"1. Please can you provide me with the following information relating to your UK retail trade sales.

How many UK retailers have you supplied commemorative coins to in each financial year from 2008 to 2014 and the revenue that this generated each year.

I'd also like to know how many of those accounts were over £250 000 annual spend.

Can you provide me with the number of new accounts opened in each of those years and also how many were closed in each of those years and the reason why accounts were closed.

For the current financial year from 2014 I'd like to know the number of UK retailers that you directly supply with commemorative coins and their company names.

In addition I'd like the RRP of the full UK brilliant uncirculated set of coins in each of those years from 2008 to 2014.

2. Please can you provide me with the following information relating to your overseas retail trade sales.

How many overseas retailers do/did you have in Europe for commemorative coins and how many in the rest of the world for each of the financial years from 2008 to 2014 and the revenue that this generated each year.

I'd also like to know how many of those accounts were over £250 000 annual spend.

Can you provide me with the number of new accounts opened in each of those years and also how many were closed in each of those years and the reason why accounts were closed.

For the current financial year from 2014 I'd like to know the number of overseas retailers that you directly supply with commemorative coins and their company names."

4. On 1 September 2014 The Royal Mint responded. It provided some information within the scope of the request. The information provided related to the request for the RRP of the full UK brilliant uncirculated set from 2008 to 2014. The remainder of the request was refused; the Royal Mint cited the following exemption as its basis for doing so: section 43 – commercial interests.
5. The complainant requested an internal review and The Royal Mint sent the outcome of its internal review on 8 October 2014. It upheld its original position.
6. During the course of the Commissioner's investigation The Royal Mint wrote to the complainant and disclosed further information falling within the scope of the request. It disclosed information relating to the number of UK and overseas retailers directly supplied with commemorative coins

from 2010-2014 and identified which accounts had a spend of over £250,000. It also identified the number of accounts opened and closed between 2010 and 2014. The complainant had originally asked for the information from 2008-2014 but has accepted The Royal Mint's explanation as to why information can only be provided from 2010 onwards.

7. The Royal Mint maintained its reliance on section 43 in respect of requested information relating to the names of the companies that it supplies, detailed information on the revenue generated and the reasons behind why accounts were closed.

Scope of the case

8. The complainant contacted the Commissioner on 14 October 2014 to complain about the way her request for information had been handled. Specifically the complainant noted that The Royal Mint currently displays some of its distributors on its website and in the past has actively displayed lists of distributors on its website. The complainant also expressed concern that The Royal Mint had stated that if disclosed, the information could be used by its competitors. The complainant asserted that The Royal Mint has a complete and absolute monopoly on the manufacture of UK coins and in her view it will remain in that position for the foreseeable future. The complainant went on to assert that it was her view that The Royal Mint was being deliberately obstructive because of the ensuing consequences. She explained that she was trying to establish that The Royal Mint had moved over to a cartel of key suppliers in order to inflate prices and that accordingly it had abused its position as market leader.
 9. The Commissioner considers the scope of his investigation is to consider whether The Royal Mint was correct to rely on the exemption at section 43 in order to refuse to disclose information about its UK, European and rest of the world retailers, including their names, revenue generated by sales and the reasons for closing any accounts. Whilst he notes that the complainant has raised the issue of some distributors being displayed on its website; the wording of the request relates to retailers as distinct from distributors and it is the wording of the request which has informed the scope of the investigation.
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Reasons for decision

Section 43 – commercial interests

10. Section 43(2) of the FOIA provides an exemption from disclosure for information which would or would be likely to prejudice the commercial interests of any person (including the public authority holding it). This is a qualified exemption and is therefore subject to the public interest test.
11. The term 'commercial interests' is not defined in the FOIA; however, the Commissioner has considered his awareness guidance on the application of section 43. This states that:

"a commercial interest relates to a person's ability to participate competitively in a commercial activity, ie the purchase and sale of goods and services"
12. In this case The Royal Mint has outlined to the Commissioner that it considers the exemption applies because disclosure of the withheld information would be prejudicial to its commercial interests.
13. The Commissioner is satisfied that, in the context of this request, the information does relate to a commercial interest. He is also satisfied that the activity involved – the sale of commemorative coins - is conducted in a competitive environment. This is set out in detail at paragraphs 18 and 19.
14. Having concluded that the withheld information is relevant to the scope of the exemption, the Commissioner has gone on to consider the prejudice test and the relevant party or parties which would be affected.
15. Section 43(2) consists of two limbs which clarify the probability of the prejudice arising from disclosure. The Commissioner considers that "likely to prejudice" means that the possibility of prejudice should be real and significant, and certainly more than hypothetical or remote. He considers that "would prejudice" places a much stronger evidential burden on the public authority and must be at least more probable than not.
16. It is important to consider the use of the term 'prejudice' in the context of the exemption at section 43. It implies not only that the disclosure of information has some effect on the applicable interest, but that the effect must be detrimental or damaging in some way. The authority must be able to show how the disclosure of the specific information requested would, or would be likely to, lead to the prejudice.

Likelihood of prejudice

17. The Royal Mint has submitted that it considers the risk of prejudice to its commercial interests to exceed the threshold of a hypothetical risk. Disclosure of the withheld information would, it states, significantly affect the ability of The Royal Mint to do business in the market place and reduce its ability to negotiate favourable terms with retailers in the future.
18. The Royal Mint has outlined, in its submission to the Commissioner, that it operates in the highly competitive collectable and gifting market, producing coins and medals to mark occasions, anniversaries and events. Within this market therefore, competitors are not just limited to other mints but also include other companies operating in the collectables and gifting market. In order to support this assertion The Royal Mint cited the recent example of its commemorative coins struck for the birth of HRH Prince George competing with a wide range of other goods.
19. In addressing the market as it relates only to coins and medals, The Royal Mint submits that this aspect is a highly competitive market explaining that other mints nationally and internationally strike coins to mark the same events and anniversaries as those coins produced by The Royal Mint. In support of this, The Royal Mint has provided the Commissioner with details of eight of its main competitors who produce coins aimed at the UK market alone. The list of competitors also extends to overseas mints and The Royal Mint has provided the Commissioner with examples of countries and their mints which issued commemorative coins to mark the royal wedding on 29 April 2011. It has also provided photocopies of some of those coins to allow for a limited comparison.
20. In the event that the requested information was disclosed, competitors would gain a detailed knowledge not only of those to whom The Royal Mint supplies coins but they would also, more importantly, know the proportion of revenue that each retailer accounts for. With this information competitors could target retailers with more lucrative deals. In such circumstances, The Royal Mint would be at a significant disadvantage in their future negotiations with retailers.
21. It is further submitted by The Royal Mint that if a retailer had knowledge of the proportion of business that it generates for the Royal Mint then they are highly likely to press for more favourable terms in future negotiations and of course, this again could put The Royal Mint at a commercial disadvantage.
22. Part of The Royal Mint's consideration of its application of section 43 has necessarily meant that it has considered the contracts that it has with

retailers. It acknowledges that its contracts with retailers include Royal Mint standard form agreements. There are also instances of The Royal Mint being required to sign up to third party terms and conditions. This is particularly applicable to larger retailers who insist on their own terms and conditions. The Royal Mint has submitted that during the timeframe set out in the request it will have entered into dozens of contractual arrangements. It submits that a sample of the contracts show that they typically contain standard confidentiality obligations on each party. These obligations prohibit the disclosure of any confidential information concerning the affairs of the other party.

23. The Royal Mint submits that any breach of these contractual obligations would damage the relationship and would prejudice the commercial interests of The Royal Mint by a downturn in orders.
24. The submission to the Commissioner details that the Royal Mint is becoming increasingly involved in the bullion market and there are many competitors around the world supplying bullion coins of the same weight and purity as those produced by The Royal Mint. It has explained that there is an issue of trust surrounding the bullion market and the main reason that customers purchase one bullion coin over another is trust in the integrity of the supplier. In the event that the information was disclosed and The Royal Mint was seen to be breaking contractual confidentiality, the reputational damage is likely to have an impact on its bullion sales.
25. Specifically asked if retailers could source the exact same coin elsewhere, The Royal Mint explained that retailers could obtain coins to mark the same events from its competitors but would not be able to obtain official coins of the United Kingdom as these are only supplied by The Royal Mint.
26. Furthermore The Royal Mint has confirmed that it does not provide details of retailers on its website. With regard to retailers who advertise themselves as 'official Royal Mint distributors', The Royal Mint stated that distribution of coins is covered by its distribution policy which neither prevents nor licences whether a retailer, at the point of becoming a distributor, may or may not advertise themselves as an official distributor.
27. The Commissioner accepts that The Royal Mint is unique in that it is the only producer of official coins of the United Kingdom; this does not necessarily mean that it has a monopoly in the commemorative coin industry and accordingly, it must seek to protect its commercial interests in order to compete in that market. The Commissioner also accepts that disclosure of information which puts a competitor at an advantage in terms of negotiation with The Royal Mint and which puts

The Royal Mint at a disadvantage in terms of future negotiations with existing clients would prejudice the commercial interests of The Royal Mint. He therefore accepts that the prejudice claimed in relation to the Royal Mint's commercial interests is real, actual and of substance and there is a causal link between disclosure and any prejudice occurring.

28. As the Commissioner considers that section 43(2) is correctly engaged insofar as disclosure would prejudice the commercial interests of The Royal Mint as set out above, he has gone on to consider the balance of the public interest test in this case.

Public interest test

29. The Royal Mint has acknowledged that there is a public interest in disclosure as this transparency could enhance the quality of discussions and subsequent decision making surrounding commemorative coins. It acknowledges too that the passage of time makes certain information less sensitive and can therefore favour the public interest argument in disclosure where the information is dated. Furthermore it has considered the beneficial impact of disclosure on individuals or the wider public in terms of transparency
30. In considering why the balance of the public interest test lies in maintaining the exemption, The Royal Mint has explained that the information is both significant and sensitive. Not only is The Royal Mint concerned that disclosure of the names and value of their business would discredit the integrity of The Royal Mint but it is concerned also that disclosure would have the effect of giving existing customers and potential customers an advantage in terms of negotiating new deals. The Royal Mint sees these as very real threats.
31. The Commissioner considers that there is a strong public interest in favour of disclosure as it promotes transparency and accountability in public authorities funded from public money. He notes however that as a Trading Fund, The Royal Mint must be able to operate in an environment which allows it to generate its own funding. In these circumstances, the weighting afforded to accountability and transparency must be offset against allowing The Royal Mint to conduct its business effectively.
32. With regard to the public interest in maintaining the exemption, the Commissioner accepts that it is in the public interest to ensure that there is no commercial advantage available to competitors in respect of existing or potential business. Whilst he recognises that disclosure of the information may ultimately lead to a reduction in The Royal Mint's pricing structure for coins, which of course would be in the public interest, he accepts that as a Trading fund, the public interest in disclosure (and any subsequent price reduction) is far outweighed by the

need to allow The Royal Mint to operate in a competitive commercial environment without giving any advantage to existing or new competitors.

33. On balance the Commissioner considers that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exemption in this case.
34. The Royal Mint has therefore correctly relied on section 43(2) in relation to the withheld information.

Right of appeal

35. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

36. 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.
37. 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

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