

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 September 2015

Public Authority: The Royal Mint Limited

Address: Llantrisant
Pontyclun
CF72 8YT

Decision (including any steps ordered)

1. The complainant submitted a request to the public authority for information in relation to themes considered for commemorative coins issued by the public authority.
2. The Commissioner's decision is that:
 - The exemptions at section 36(2)(b)(i) and (ii) FOIA were correctly engaged by the public authority.
 - However, in all the circumstances of the case, the public interest in maintaining the exemptions did not outweigh the public interest in disclosing the information referred to as 'the disputed information' in the body of this notice.
 - He further finds the public authority in breach of sections 17(1)(b), 17(3)(b) and 17(7) FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Provide the complainant with the disputed information.
4. The public authority must take these steps 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 1 April 2014 the complainant submitted a request for information to the public authority in the following terms:

'The recent triennial review into the Royal Mint Advisory Committee states how the Royal Mint researches potential themes for coins, consults Royal Mail on its plans and eventually prepares a proposal paper which includes a long list of potential themes, a short list of recommended themes, a second list of themes judged to be commercially viable but less likely to be consumer demand and a third list of themes rejected as unsuitable.

For 2010, 2011, 2012 and 2013 I'd like to request:

- a) the proposal paper. For information, I'm interested in the lists of the themes drawn up.*
- b) the revised paper on proposed themes submitted to the Chancellor*
- c) the final list (the royal submission) seeking the final approval of the Queen - and details of which of the final list were approved or rejected by the Queen.*

If there are any issues concerning the request i.e. time, commercial info etc. I'm happy to be contacted to discuss it - I'm not interested in obtaining information that is considered commercially sensitive but what ideas were drafted, accepted, rejected and why etc.'

6. On 16 May 2014 the public authority responded. The authority withheld the information held within the scope of Parts a-c of the request in reliance on section 36 FOIA. It additionally withheld the information held within the scope of Part c only in reliance on section 37 FOIA.
7. On 1 August 2014 the complainant requested an internal review.
8. The public authority did not respond to the complainant's request for a review.¹

¹ The Commissioner has commented on this further in the 'Other Matters' section of this notice.

Scope of the case

9. The complainant contacted the Commissioner on 10 February 2015 to complain about the way his request for information had been handled. By the time he contacted the Commissioner, the complainant had still not received a response from the public authority to his request for an internal review despite sending another email on 15 August 2014 advising the authority that it had yet to provide a response.
10. The complainant's arguments challenging the application of section 36 were set out in his email of 1 August. A summary of those arguments along with the public authority's own submissions have been summarised further below.
11. However, it is relevant to note at this stage that in its submissions, the public authority revised its original position in relation to Part c of the request. The authority advised both the complainant and the Commissioner that it technically did not hold any information within the scope of that Part c of the request. The public authority also clarified that it was specifically relying on the exemption at section 36(2)(b)(i) FOIA.
12. The substantive scope of the investigation therefore was to consider whether the public authority was entitled to withhold the information held within the scope of Parts a and b of the request (the disputed information) in reliance on section 36(2)(b)(i).
13. Although the complainant did not challenge the public authority's revised position in relation to Part c of his request, the Commissioner has, for completeness, recorded his finding in relation to that part of the request in this notice.

Reasons for decision

Disputed information

14. The disputed information consists of;
 - Proposals for potential themes for commemorative coinage for 2010, 2011, 2012 and 2013 submitted by the public authority to the Royal Mint Advisory Committee (RMAC) for consideration, and

- Submissions to the Chancellor of the Exchequer from a sub-committee of RMAC (the sub-committee) setting out their justifications for themes recommended, as well as those rejected, by the sub-committee.

Part c of the request

15. The public authority explained that whilst it prepares drafts of royal submissions, these are sent directly to HM Treasury and appropriate Ministers. However, from that point on, it does not have any further involvement with the submissions. Instead, submissions are finalised as HM Treasury and appropriate Ministers see fit and final submissions, seeking the approval of The Queen, would be issued and sent by the Chancellor of the Exchequer. Therefore, although the public authority did hold copies of draft royal submissions, these would not necessarily identify the final list of themes submitted to The Queen by the Chancellor for approval.
16. In view of the above, the Commissioner accepts that the public authority does not hold the final royal submission (including the final list), for coin themes for 2010, 2011, 2012 and 2013 and details of the themes accepted or rejected by The Queen.

Section 36(2)(b)(i)

17. Section 36(2)(b) states:

'Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-.....

...(b) 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 purposes of deliberation, or

(c) would otherwise prejudice, or would be likely to otherwise prejudice, the effective conduct of public affairs.'

18. Section 36(5) FOIA identifies who may act as each public authority's 'qualified person' for the purposes of section 36(2). The public authority in this case is a government owned company. It is actually owned by The Royal Mint trading fund, which is itself owned by the Treasury. The public authority explained that the exemption at section 36(2)(b) was engaged on the basis of the opinion of its Chief Executive, who is the authority's qualified person and is also a member on RMAC.

19. The Commissioner is satisfied that the Chief Executive is the designated qualified person within the meaning in section 36(5) FOIA.
20. In determining whether this exemption is engaged the Commissioner must determine whether the qualified person's opinion was a reasonable one. In doing so the Commissioner has considered all of the relevant factors including:
 - Whether the prejudice relates to the specific subsection of section 36(2) that is being claimed. If the prejudice or inhibition envisaged is not related to the specific subsection, the opinion is unlikely to be reasonable.
 - The nature of the information and the timing of the request, for example, whether the request concerns an important ongoing issue on which there needs to be a free and frank exchange of views or provision of advice.
 - The qualified person's knowledge of, or involvement in, the issue.
21. Further, in determining whether the opinion is 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. This is not the same as saying that it is the only reasonable opinion that could be held on the subject. The qualified person's opinion is not rendered unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It is only unreasonable if it is an opinion that no reasonable person in the qualified person's position could hold. The qualified person's opinion does not have to be the most reasonable opinion that could be held; it only has to be a reasonable opinion.
22. The public authority explained that the request was quickly brought to the attention of the qualified person when it was originally made and discussions took place internally, involving the qualified person, in respect of the application of section 36. Given the qualified person's membership on RMAC and his own intimate knowledge of the disputed information, he provided the opinion that section 36 was engaged.
23. On the lack of a written record of the opinion, the public authority explained that, as a matter of good practice, and in the interests of maintaining an effective audit trail, it would ordinarily engage in a more

formal written procedure but it did not on this occasion. It considered that the prevailing circumstances allowed for a less formal process to be adopted without any prejudice to obtaining a reasonable opinion.²

24. The qualified person gave his opinion that both exemptions at section 36(2)(b) were engaged, specifically that the disclosure of the disputed information would be likely to inhibit the free and frank provision of advice, or would be likely to inhibit the free and frank exchange of views for the purposes of deliberation.
25. The public authority explained that in the qualified person's opinion, it was not difficult to envisage a scenario where campaign groups, rightly or wrongly, place undue pressure on the public authority or RMAC, or for that matter the Chancellor or The Queen, to lobby for their chosen event or anniversary, or protest if it is not considered or rejected by either the authority or the sub-committee.
26. It was argued that potential adverse comments and behaviours which might arise out of disclosure could result in individuals being less willing to stand as members of RMAC or the sub-committee for fear or recriminations. Furthermore, existing members might become more cautious in selecting or rejecting coin themes by reference to their current stated objectives and instead be swayed by external influences and third parties with their own individual agendas. According to the public authority, these positions, though voluntary, are of major significance when it comes to the United Kingdom's (UK) coinage and its themes.
27. Consequently this could have a significant effect on the process for deliberation on themes for UK coinage such that any future proposed themes for coinage would not be debated in an open manner without fear of future disclosure and recrimination. This could then reduce the breadth of variety in themes considered and ultimately included in UK coinage.
28. The Commissioner has carefully considered the papers containing the proposed themes and the sub-committee's submissions to the Chancellor. He is satisfied that they contain advice in relation to commemorative themes for UK coins.

² The Commissioner has commented on this in the 'Other Matters' section.

29. The Commissioner considers that it was reasonable to hold the opinion that disclosure of the disputed information could put the public authority and/or RMAC under pressure in future in relation to the selection of themes for coinage. Clearly, campaign groups could rely on the disputed information to advance their own interests by pushing for the selection and/or the rejection of particular themes in future. The Commissioner also considers reasonable the opinion that adverse comments resulting from disclosure of the disputed information could affect the candour with which potential themes for coinage are discussed by the public authority and RMAC in future for fear that they might be unduly criticised for the views expressed.
30. The Commissioner therefore finds that the exemptions at section 36(2)(b)(i) and (ii) were correctly engaged by the public authority.

Public interest test

31. The exemptions at section 36(2) are subject to a public interest. Therefore, the Commissioner has to consider whether in all the circumstances of the case the public interest in maintaining the exemptions outweighs the public interest in disclosing the disputed information.

Complainant's arguments

32. The complainant's submissions in support of his view that the public interest is favour of disclosure are summarised below.
33. He questioned whether those that have expressed views did so with the expectation that they would never be disclosed.
34. He argued that there was a strong public interest in being aware of what themes are being considered for coinage, which would help contribute toward demonstrating why themes are chosen.
35. He further argued that the decision making process would be enhanced as a result, because those involved in the process would be aware that their justification for selecting or rejecting themes for coinage would have to be robust.
36. He strongly rejected the argument that disclosure would lead to a chilling effect of such severity that individuals and officials involved in the discussions and decisions would be less inclined to robustly scrutinise some themes for coinage. By comparison, he noted that feelings could be aroused in relation to any debate on government policy but he did not consider that officials would be less likely to consider the relevant issues robustly as a result.

Public authority's arguments

37. The public authority's public interest arguments are summarised below.
38. The public authority acknowledged that knowledge of the matters considered in relation to recommended/rejected themes could result in greater transparency. However, it argued that on balance, there were more significant factors in favour of not disclosing the disputed information.
39. The public authority argued that there was a strong public interest in the authority and the sub-committee being able to work through potential options and their implications without fear that their decisions may be held up to ridicule.
40. Similarly, there is a strong public interest in the public authority and RMAC being able to have an informed, free and frank debate on any options for coinage. The fear of potential recrimination from campaign groups or the media pushing their own agenda would not be in the public interest.
41. It noted that RMAC and the sub-committee are separate from the public authority and therefore, in its view, provide the suitable degree of rigour and independence in ensuring that the themes chosen are widely acceptable. In addition, given the make-up of RMAC and the sub-committee, which includes experts in art, design, heraldry, typography, sculpture, history and numismatics, the public authority argued that there was a public interest in not making it more difficult to recruit individuals to provide the broad perspective necessary for recommending or rejecting themes for coinage. This, it argued, was more so because membership of RMAC and the sub-committee is voluntary and the existing governance structure is largely based on goodwill and public service.
42. The public authority submitted that, though somewhat historic, the disputed information remains very recent. Nevertheless, it argued that the passage of time was of little relevance in this case because it did not negate the significant factors which weigh against disclosure.

Balance of the public interest

43. Each of the arguments above has been considered by the Commissioner when reaching his decision, even where he has not considered it necessary to address a particular argument further in the body of this notice.

44. The Commissioner considers the reasonable opinion of the qualified person to be an important factor in his assessment of the balance of the public interest and therefore accords it the necessary weight. However, the Commissioner has to also form his own view on the severity, extent and frequency with which inhibition of the free and frank provision advice or the free and frank exchange of views for the purposes of deliberation may occur. It is pertinent to note that only those factors which are actually inherent in the exemptions will carry any weight when assessing the balance of the public interest.
45. The starting point as always should be the content of the disputed information itself including its sensitivity or otherwise. Factors such as the age of the disputed information as well as the timing of the request are also relevant in determining where the balance of the public interest lies.
46. The Commissioner has carefully inspected the disputed information. Strictly speaking, the information itself is not actually a record of discussions. More accurately, it constitutes advice provided by the public authority to RMAC in relation to proposed themes for commemorative coins and by the sub-committee to the Chancellor in relation to recommended and rejected themes. Both the authority and sub-committee explain the significance and relevance of the themes. The sub-committee's submissions also include their reasons for not recommending particular themes. The Commissioner notes that the proposals and recommendations were submitted between 2008 and 2011 in relation to coin themes for 2010 to 2013.
47. The Commissioner agrees that there is a public interest in the public knowing the themes that have been considered for commemorative coinage and the rationale for eventually selecting and rejecting particular themes. He does not disagree that members of the sub-committee have the requisite expertise, and provide the suitable degree of rigour and independence in the selection of themes for coinage. Nevertheless, he does not accept that by implication the public should not be given the opportunity to consider the advice given in relation to themes proposed and subsequently recommended or rejected for coinage in the past. This would enhance the public's understanding of the selection process. The Commissioner considers that the public should be able to consider such advice and the themes when it is not likely to be too intrusive or prejudicial to any ongoing related discussions.
48. The Commissioner agrees that there is a strong public interest in preventing such intrusion so as to ensure that the public authority and RMAC have the necessary safe space to consider themes for

commemorative coinage free from ongoing scrutiny by campaign groups and the media. It is important that the authority and RMAC do not come under pressure from those who are able to advance their own interests more vigorously because they have the means to do so. Nonetheless, the Commissioner is not persuaded that the arguments for safe space carry significant weight in the circumstances of this case. The disputed information does not relate to ongoing discussions regarding the selection of themes for coinage. The most recent advice was provided in 2011 in relation to coinage for 2012 (for the London Olympic Games) and 2013. The earliest advice was provided in 2008. Therefore, the public interest in protecting the safe space for the public authority and RMAC to consider various themes cannot carry any significant weight in light of the circumstances at the time of the request.

49. In terms of the chilling effect on the free and frank provision of advice and free and frank discussions, the Commissioner agrees that with the introduction of FOIA in 2005, it is unlikely that the individuals who provided advice and recommendations did so in the expectation that it would never be made public. However, it is equally not unreasonable for the public authority to argue that the disputed information is still fairly recent and there is a greater public interest in it not being disclosed. It is likely that disclosure would generate debate in relation to the merits of proposing, recommending and rejecting particular themes. The Commissioner is, however, not persuaded that members of the sub-committee with their expertise and breadth of experience would be unlikely to undertake a thorough and robust consideration of proposed themes in the future if information about their previous decisions were disclosed.
50. Although they would be well aware that their recommendations are unlikely to be met with universal approval, the Commissioner is not persuaded that members of the sub-committee would, for that reason, lack the courage to express their considered views on the matters under discussion in which they are clearly highly qualified. Similarly, he is not persuaded that staff of the public authority would be less robust in their consideration of options with a view to proposing themes to RMAC. As far as the Commissioner can see, the themes and the disputed information more generally do not touch on particularly controversial subjects which, if revealed, might significantly affect the candour of similar discussions in future. Therefore, he has not attached significant weight to the argument that disclosure would lead to a chilling effect on the free and frank provision of advice and free and frank discussions.
51. The Commissioner has also considered the likely difficulty in recruiting individuals to provide the broad perspective necessary for considering proposed themes for coinage, especially in light of the fact that

membership of RMAC and the sub-committee is voluntary. He accepts that adverse publicity generated as a result of the disclosure of the disputed information might discourage individuals from volunteering to serve on RMAC and indeed on the sub-committee. However, by being clear about the transparency of the process when recruiting volunteers to these roles, the expectations of candidates can be appropriately managed. The public interest in greater transparency should not be defeated by an approach which allows for no change of practice or expectation in that regard.

52. In view of the above, the Commissioner is not persuaded that the severity and extent of the safe space and chilling effect arguments are significant enough to tip the balance in favour of withholding the disputed information.
53. The Commissioner therefore finds that in all the circumstances of the case, the public interest in maintaining the exemptions did not outweigh the public interest in disclosing the disputed information.

Procedural Matters

54. A public authority is required by virtue of section 17(1)(b) FOIA to issue a refusal notice promptly and in any event no later than 20 working days which specifies the exemption it is relying upon to withhold information requested by an applicant. Section 17(3)(b) FOIA further requires a public authority to provide an applicant with details of the public interest test conducted in reliance on a qualified exemption either in the refusal notice or in a separate notice given within a reasonable time.
55. The Commissioner finds the public authority in breach of section 17(1)(b) for issuing its refusal notice well over the time limit and for not specifying the limb of the exemptions at section 36 that it was relying upon to withhold the disputed information. The Commissioner additionally finds the public authority in breach of section 17(3)(b) for failing to provide the complainant with details of the public interest factors it had considered in maintaining its reliance on the exemption at section 36(2)(b).
56. Section 17(7) also states that a refusal notice issued by a public authority must contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide

such a procedure and contain particulars of the right to appeal to the Commissioner.

57. The Commissioner finds the public authority in breach of section 17(7) because the refusal notice issued by the public authority did not advise the complainant that he could request an internal review and that he also had the right to subsequently appeal to the Commissioner.

Other Matters

58. Although there is no statutory time limit for a public authority to complete its internal review, as a matter of good practice, the Commissioner expects internal reviews to take no longer than 20 working days and 40 working days in exceptional circumstances.
59. The public authority explained that it had considered the internal review request and a draft response upholding the original decision was prepared but it was unclear from its records whether it had actually been sent to the complainant. It also claimed that it had not received any correspondence from the complainant indicating that he had not received the response.
60. The Commissioner notes that on 15 September 2014 the complainant sent an e-mail to the public authority to chase the authority's response to his internal review request which was submitted on 1 August 2014. There is no indication that anyone from the public authority ever got back to him.
61. In light of the above, the Commissioner finds that the public authority did not provide a response to the internal review.
62. There is no requirement for public authorities to document the process of obtaining the qualified person's opinion. However, as a matter of good practice, the Commissioner expects public authorities to maintain a written record of the process and the opinion itself, not least because the timing of the opinion could be relevant when considering whether any of the exemptions at section 36(2) were correctly engaged.
63. The Commissioner notes that, in the light of his concerns in relation to this and another case, the authority has now committed to taking necessary steps to ensure that it meets the statutory deadlines for responding to requests as well as completing internal reviews generally within 20 working days.

Right of appeal

64. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

65. 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.
66. 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

**Graham Smith
Deputy Commissioner
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SK9 5AF**