

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 16 May 2017

**Public Authority:** The British Museum  
**Address:** Great Russell Street  
London  
WC1B 3DG

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to the British Museum's (the museum) most recently agreed sponsorship arrangement with BP. The museum disclosed what recorded information it does hold to the complainant but confirmed that it held nothing further. In terms of the amount of sponsorship secured from BP, the museum refused to disclose this information citing section 43 of the FOIA.
2. The Commissioner's decision is that the museum does not hold any further recorded information to that already disclosed and was correct to refuse to disclose the amount of sponsorship secured from BP under section 43 of the FOIA.
3. The Commissioner therefore does not require any further action to be taken.

## Request and response

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4. On 29 July 2016, the complainant wrote to the museum and requested information in the following terms:

"1) Please indicate the means and process by which this decision was reached. Specifically, please identify whether the decision was discussed and/or approved by the museum's board of trustees, and whether it was tested against any internal policies on ethics and sustainability by the trustees. Please identify those policies, documents or criteria by which this new arrangement was tested.

2) Was the deal subjected to any kind of ethical scrutiny by an internal ethics committee or other body within the museum? If so, please identify the format, remit and powers of that body, and how members are appointed to that body. As above, please indicate which internal policies were used to scrutinise the ethical suitability of renewing the sponsorship deal with BP and provide copies of them.

3) Please disclose copies of any communications between the museum and BP in relation to the renewal and launch of the new sponsorship deal which have taken place in the months May to August 2016. This should include, but not be limited to, members of the development, security and director's office teams.

"4) Please confirm the start/end dates of the sponsorship deal, the exact focus for BP's support (e.g. temporary exhibitions, long-term posts within the museum) and the amount that will be paid by BP. Given that the publicly stated amount of BP's payments to four publicly-funded institutions is £7.5 million over a period of five years, it is within the public interest to understand the distribution of that money between the respective institutions and the reasons for doing so."

5. The museum responded on 30 August 2016. The museum provided a response to questions 1 and 2, advised the complainant that it does not hold any recorded information falling within the scope of question 3 and confirmed that it wishes to withhold the recorded information falling within the scope of question 4 under section 43 of the FOIA.
6. The complainant requested an internal review on 21 September 2016.
7. The museum carried out an internal review and notified the complainant of its findings on 19 October 2016. The museum confirmed that it had now located one email chain falling within the scope of question 3 of the request. It disclosed this to the complainant with some personal data redacted under section 40 of the FOIA.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 16 November 2016 to complain about the way his request for information had been handled. In relation to questions one and two of his request, he stated that he would like to understand whether a process of due diligence was conducted and if so what form it took and whether the process was documented. In relation to question 3, the complainant confirmed that he believes further recorded information should be held falling within the scope of this element of his request. Concerning question 4, he disagreed that section 43 of the FOIA applies.
9. The Commissioner's investigation has therefore focused on whether the museum holds any further recorded information falling within the scope of questions 1, 2 and 3 of the request and whether the museum is entitled to rely on section 43 of the FOIA.
10. No complaint was made about the application of section 40 of the FOIA, so the application of this exemption has not formed part of the Commissioner's investigation.

## **Reasons for decision**

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### **Questions one and two**

11. The complainant stated that he remained dissatisfied with these elements of his request because he wished to know whether due diligence was conducted and if so what form it took and whether this processed was recorded.
12. The Commissioner asked the museum to look at the way it handled these elements of the request and to confirm whether it holds any recorded information falling within the scope of these two questions.
13. The museum said that it does not hold any recorded information relevant to these elements of the complainant's request. It explained that trustees and senior staff at the museum are aware of the nature of BP's business and have had a long-standing working relationship with that organisation for many years. They are also aware of the opposition of campaign groups to the continuing sponsorship arrangements between BP and the museum. It stated that whilst these issues may have been discussed as part of any decision-making process, the museum holds no recorded information on those discussions.

14. The museum confirmed that, with regards to the Museum's Association Code of Ethics, the MA Ethics committee looked at the decision at the request of Art Not Oil and found that there was no breach of its code of ethics.
15. The museum explained that it does not have a specific committee responsible for scrutinising what the complainant described as "ethical issues". The Director and trustees consider "ethical" issues in relation to sponsorship arrangements with any existing or potential sponsor but their consideration of these issues is not recorded.
16. These arguments were presented to the complainant and the complainant questioned again whether the museum holds any recorded information falling within the scope of these two questions. He also asked whether it was possible, now, to ask the museum whether it holds recorded information on the discussions about whether to renew BP's sponsorship of the museum in general, or specifically around the nature of BP's business and the opposition of campaigners.
17. The Commissioner informed the complainant that she is limited to considering the original request that was made in this investigation. Any desire now to know whether there is any recorded information on discussions about whether to renew BP's sponsorship of the museum in *general* or specifically around the nature of BP's business and the opposition of campaigners would be a new request.
18. The Commissioner did however ask the museum again to ensure that it does not hold any recorded information within the scope of questions 1 and 2 of the request. The museum responded, again, stating that it does not.
19. The Commissioner is satisfied that, on the balance of probabilities, the museum does not hold any recorded information falling within the scope of these elements of the complainant's request. She is satisfied that the museum has carried out relevant searches and explained to the complainant why no recorded information of the discussions in question is held. She therefore does not require any further action to be taken.

### **Question three**

20. The complainant confirmed that one email chain was disclosed to him at the internal review stage but he believes further recorded information is held. He referred to a similar request made to the National Portrait Gallery which revealed 1073 emails.
21. The Commissioner asked the museum to review the handling of this element of the complainant's request in light of his comments and to

carry out further searches to establish whether further recorded information is indeed held.

22. The museum replied and confirmed that the following members of staff were consulted as a result of the complainant's request and asked to determine what recorded information, if any, is held:
  - Director of Resources (Head of Finance and Human Resources at the time).
  - Governance Manager (with responsibility for managing the Director's correspondence).
  - Head of Security and Visitor Services.
  - Head of Press and Marketing.
  - Head of Corporate Relations.
23. The museum asked these individuals to confirm whether they held any information within the scope of any of the questions the complainant asked. The museum confirmed that it interpreted this element of the complainant's request to mean correspondence covering the period 1 May 2016 to 1 August 2016 (the working day following the date of receipt of the request) rather than May to August. It also decided to contact the Deputy Director around the time the complainant submitted his request for internal review as it was noticed that they had not been previously consulted.
24. The Head of Press and Marketing and the Head of Corporate Relations responded saying that they only held one item each of correspondence within the scope of this element of the complainant's request, which they supplied. The email from the Head of Press and Marketing was a message between a member of staff of one of the other organisations that was receiving sponsorship from BP under the arrangement and a member of staff of BP to which the Head of Press and Marketing was copied in and which she had retained. Because this was not considered direct correspondence between the Museum and BP it was not included with the final response. However, following the internal review the reviewer decided that this item should be disclosed subject to redaction and this item was then supplied to the complainant.
25. The Head of Corporate Relations forwarded one message which was sent to her from a member of staff of BP within the time frame requested however as this item related to a future specific exhibition that BP would be supporting it was outside the scope of the complainant's request. She later confirmed verbally that she held no other communications.
26. In relation to communication generally with BP during the period requested, the Head of Corporate Relations confirmed that

communications with BP were generally managed by her alone and often in meetings or over the phone. She has responsibility for all aspects of management of that relationship, consequently few, if any other staff at the museum would be in correspondence or other communication with any representative of BP without her knowledge.

27. The museum explained that the decision to accept sponsorship from BP had been taken before May 2016. Any communication between the two parties after May 2016 was largely by phone or in person in relation to the completion and signing of the new contract and confirmation by BP of its arrangements for the announcement of the renewal of its sponsorship to the four cultural organisations of which the museum was one. Relevant members of staff have confirmed that, in line with the museum's information management retention guidelines, they do not retain routine administrative email strings after an event or activity has taken place or where there is no business or legal requirement to keep them.
28. In relation to communications concerning the launch of the sponsorship arrangement, the Head of Press and Marketing explained that the launch was managed by BP itself, not by the organisations that were to receive funding from BP as part of this new sponsorship arrangement. The museum therefore explained that it did not make the launch announcement and any communication with BP around the launch event itself was handled verbally either in person or by phone.
29. The museum asked staff again to check that they hold no additional correspondence within the scope of this element of the complainant's request. They all confirmed that they do not hold, and did not hold at the time of the request, any other information other than that supplied to the complainant at the internal review stage.
30. The museum did however advise that one further item of correspondence within scope has however subsequently been located by the Head of Legal Services who was copied into one email string between the Head of Corporate Relations and a member of BP staff in relation to the drawing up of the contract between the two parties. This item of correspondence was then disclosed to the complainant with some personal data redacted under section 40 of the FOIA.
31. In terms of the complainant's comments about the level of correspondence the National Portrait Gallery held, the museum stated that it is unable to comment on this disparity and can only reiterate that the museum operates its own records retention policy and does not retain what it considers to be routine administrative emails.

32. The complainant was given the opportunity to respond to the museum's submissions. The complainant stated that his request was made a short time after the renewed sponsorship deal was announced. As such, he believes even routine administrative emails would still have been held by the time of his request. He also referred to other requests to the museum made by other individuals and organisations that he was aware of around the area of BP sponsorship which yielded more sizeable disclosures with relatively everyday administrative emails being included. The complainant also wished to question whether there had been a change in the museum's record retention policy and procedures.
33. The museum was asked to provide its further comments.
34. It stated that to the best of its knowledge there has been no change in the museum's record retention policy or procedures and it can only reiterate again the detailed searches it has undertaken, the staff contacted and the fresh searches that were carried out as a result of this complaint. No further recorded information to that already disclosed is held.
35. The Commissioner is satisfied that, on the balance of probabilities, the museum does not hold any further recorded information falling within the scope of this element of the complainant's request. She is content that detailed searches have been carried out and the relevant staff members contacted and any recorded information that is held has already been disclosed to the complainant. She is therefore satisfied that no further action is required for this element of the request.

#### **Question 4**

36. The complainant asked to know of the focus of BP's sponsorship and the amount the museum will receive, as agreed and signed on 23 May 2017. Initially the museum refused to provide this information under section 43 of the FOIA.
37. During the Commissioner's investigation however the museum confirmed that it was happy to disclose to the complainant that BP will continue to support the exhibition programme for a further five years. It confirmed that a general description of what activities are included in general terms within the sponsorship agreement, can be accessed via the following link:  
  
[http://www.bp.com/en\\_gb/united-kingdom/media/press-releases/BP-and-leading-UK-cultural-institutions-extend-partnerships-for-a-further-five-years.html](http://www.bp.com/en_gb/united-kingdom/media/press-releases/BP-and-leading-UK-cultural-institutions-extend-partnerships-for-a-further-five-years.html)
38. This information was communicated to the complainant and no further concerns were raised.

39. This now leaves the amount of sponsorship agreed for the five years beginning January 2018 and the museum's application of section 43 of the FOIA.
40. Section 43 of the FOIA states that a public authority may refuse to disclose information if it considers disclosure would or would be likely to prejudice its own commercial interests or those of a third party.
41. In this case the museum has presented arguments to demonstrate that disclosure would be likely to prejudice its own commercial interests and those of BP.
42. Section 43 of the FOIA is also subject to the public interest test. So, in addition to demonstrating that the exemption is engaged, a public authority must consider the public interest arguments for and against and decide where the public interest lies.
43. The museum confirmed that whilst it has disclosed the monetary amounts of previous BP sponsorship for arrangements that have now expired, it considers the disclosure of the monetary amounts for the sponsorship arrangement January 2018 onwards would be likely to prejudice its own commercial interests. It stated that it has contacted BP directly about this request and the possibility of disclosure and BP has specifically objected to disclosure.
44. The museum explained that whilst the overall monetary support given by BP to four cultural institutions over five years is in the public domain, the individual amounts received by BP for each institution may vary, may cover a different range of activities in each case and may be subject to different sponsorship benefits in each case. The sponsorship benefits that each cultural institution has given to BP may vary in quantity and in the proportionate value when set against the amounts of sponsorship given by BP in each case. It is well known that cultural institutions are in competition with one another for corporate sponsorship. Disclosure of this information would allow the monetary amount and what it agreed for that to be scrutinised and compared which would have the potential of prejudicing the museum's ability to negotiate new sponsorship arrangements with other parties. The museum stated that it would also be likely to prejudice its freedom to compete in the finite market place for corporate sponsorship.
45. The museum explained that all sponsorship deals are unique and specific to each sponsor. The nature of each deal including the amounts to be paid for specific benefits is commercially sensitive and almost all of its corporate supporters ask for the cost of the partnership not to be disclosed. It argued that it is in its own interests to secure the highest possible fee for any support arrangement and in the commercial



interests of all its sponsors to achieve value for money and return on investment. Public knowledge of the rates paid for specific sponsorships would be likely to prejudice the museum's ability to negotiate the best possible deal on an individual basis.

46. The museum stated that it accepts *historic* information on fees paid for past sponsorship is no longer commercially sensitive because the market for sponsorship continues to change. But this is not the position here. The requested information is the amount of sponsorship the museum will receive from BP for the five years commencing in January 2018. Therefore, the amount of sponsorship not for the current arrangement but the new arrangement to commence at the beginning of 2018, which was only signed two months before the date of the complainant's request. It considers the information for the current ongoing contractual arrangements and any agreed future arrangement should not be disclosed.
47. In addition, the museum argued that disclosure would be likely to damage the commercial interests of BP. It states that BP has specifically objected to the disclosure of this information and has said that disclosure would be likely to damage its relationships with other cultural institutions and the museum. The requested information had only just been agreed at the time of the request and was for a replacement arrangement once the current arrangement had expired. Each arrangement is different and individually negotiated with each cultural institution dependent upon a number of varying factors. BP is a commercial organisation too and needs to secure the best terms it can for the fee payable just as the museum and other cultural institutions do.
48. The Commissioner notes in this case that the requested information relates to a new arrangement just signed between the two parties prior to the request relating to the amount of sponsorship and the benefits to be supplied for that due to commence in January 2018. It relates not to the current arrangement in place or any past expired arrangements but to a new arrangement that will come into force once the current arrangement has ended. Commercial negotiations had only just ended by the time of the request and a public announcement made, by BP, of its continuing sponsorship of the arts for a further five years commencing in 2018. The information was and still is very much live and current and therefore distinct from the historical sponsorship amounts previously disclosed by the museum and other cultural institutions in recent years.
49. The Commissioner considers each arrangement is unique and individually negotiated. But a lot of what BP gains from the monetary amount given is on show at the various exhibitions and events that it

sponsors. Disclosure of the amount agreed in the same market conditions (with the request being so close to when the arrangement was finally agreed) would be useful to other sponsors wishing to enter into similar arrangements or to the other cultural institutions which receive BP sponsorship that are in competition, just like the museum, for corporate sponsorship. Disclosure would be likely to prejudice the museum's ability to secure other deals and compete fairly against other organisations in the current market conditions. This would hinder its ability to secure the best terms and valuable funds upon which it heavily relies.

50. The Commissioner also accepts that, due to the closeness of the request to the signing of the sponsorship arrangement to which this request relates, disclosure would be likely to prejudice the museum's long standing relationship with BP. BP is fully aware that cultural institutions have released information into the public domain in recent years about historic arrangements and sponsorship amounts and appears therefore to accept that such information, after the passage of sometime, is no longer commercially sensitive. But the requested information here is the amount only just agreed, at the time of the request, for the next arrangement for 2018 onwards. It is very much current and live information, specifically negotiated within the same market conditions (or at least very similar) as those in existence at the time of the request. And it has itself objected to disclosure of this information at this time.
51. The Commissioner also agrees that disclosure of this information would be likely to prejudice the commercial interests of BP. It too must negotiate with each cultural institution and any other organisation it sponsors to secure the best possible terms for the amount agreed. Each arrangement with the cultural institutions will be different and secured on different terms. Disclosure of the amount given to the museum, at a time when BP has only just secured similar arrangements with the other cultural institutions, would enable the other cultural institutions to scrutinise and compare arrangements. This could lead to some questioning the terms they have secured and ultimately prejudicing the long running support of BP in this area.
52. For the above reasons, the Commissioner is satisfied that section 43 of the FOIA is engaged. She therefore now needs to go on to consider the public interest test.
53. The museum stated that it acknowledged the public interest in disclosure. Disclosure would allow public scrutiny of the financial arrangements of public bodies to ensure that they are managing their commercial relationships effectively and in the best interests of the

taxpayer. It also recognised the public interest in general openness and transparency.

54. The museum also confirmed that it recognises the interest that some have in BP's sponsorship of the arts and that some consider there are ethical issues with such arrangements. Disclosure would enable those with specific interests in this relationship to understand more clearly the importance of such sponsorship and effectively how the museum and BP both benefit out of this long standing arrangement.
55. However, the museum considered that there are stronger public interest arguments in favour of maintaining this exemption. It stated that partnership arrangements with third parties are of significant importance to the museum and its own commercial interests, particularly in the current economic climate of repeated funding cuts. There is a greater public interest in maintaining the museum's ability to secure such sponsorship – funding on which it heavily relies just like the other cultural institutions. Disclosure would weaken its bargaining position with other potential sponsors and damage the relationship it has with BP due to the specific timing of the request. In a climate of public funding cuts, this is not in the wider interests of the general public.
56. The Commissioner has considered the arguments for and against disclosure and she has decided that the public interest rests in maintaining this exemption. She will now explain why.
57. She understands that there is a public interest in favour of openness and transparency and in the public understanding more closely how public authorities are funded. The Commissioner also acknowledges that the relationship between BP and the arts has in the past and continues to attract media coverage, public interest and at times opposition from those that specifically object to it on ethical grounds.
58. However, the Commissioner does not consider it is in the interests of the wider public to disclosure information which would be likely to damage the museum's ability to secure such sponsorship, whether with BP or other third parties in the future. The museum relies heavily on corporate sponsorship in order to carry out its core functions especially in the current economic climate of continuing cuts to public funds. If the museum's ability to secure further sponsorship arrangements is hindered this will have a knock on effect on the services it can provide to the public.
59. The Commissioner considers the timing of the request is significant in this case. She accepts that past expired arrangements and sponsorship amounts have been disclosed in recent years without an obvious detrimental impact upon the interests of both parties. But she considers

that the circumstances here are notably different. The requested information is not historic fees or arrangements but the fees and arrangements for a future agreed deal yet to come into force. Negotiation had only just ended at the time of the request, market conditions have not significantly altered and so the Commissioner accepts that such information could potentially be used to the commercial detriment of the museum. She considers that such consequences are not in the public interest.

## **Right of Appeal**

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60. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

61. 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.
62. 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 .....**

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**