

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2023

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

Decision (including any steps ordered)

1. The Commissioner's decision is that the British Museum is entitled to withhold the requested information about funding by fossil fuel companies under section 43(2) of FOIA and that the public interest favours maintaining the exemption. It is not necessary for the British Museum to take any corrective steps.

Request and response

2. The complainant made the following information request to the British Museum ('the Museum') on 30 November 2022:

"I'm writing to you under the Freedom of Information Act (2000) to ask that you please disclose to me any and all funding your organisation has received from fossil fuel (oil, gas, coal) over the last 5 years, year on year. This could be funding for galleries, exhibitions, research funding, grants, or other such agreements. If this cannot be done within the cost limit I would the same for the last three years (2020, 2021, 2022)

The companies I would like you to focus on are: BP, Glencore, Petrofac, Shell (Royal Dutch Shell), Total, ExxonMobil, Schlumberger,

Centrica, Equinor, BHP Group, Bantu, Eni, Chevron, Enbridge, ConocoPhillip, Chesapeake Energy, and Cluff Energy.”

3. The Museum’s final position was to withhold the requested information under section 43(2) of FOIA.

Reasons for decision

4. This reasoning covers the Museum’s application of section 43(2) of FOIA to the information the complainant has requested.
5. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
6. The Commissioner considers three tests when he is considering whether information engages section 43(2). First, he is satisfied that the harm the Museum envisions relates to commercial interests; its own – as it has stated in its submission to the Commissioner.
7. Second, the Commissioner considers whether a causal link exists between disclosing the information and the envisioned commercial prejudice.
8. In its submission, the British Museum has explained that it publishes a full list of current corporate supporters on its website. There it confirms that the Museum receives funding from one organisation which falls within scope of this request - BP. The Museum has confirmed that BP is the only organisation within the scope of this request which has made a financial contribution to the Museum within the last five years.
9. The Museum’s present arrangement with BP, which is a material donor, is time limited with the current agreement due to conclude this year. Any potential future relationship with this donor would need to be negotiated afresh by both parties.
10. All potential corporate supporters enter a cultivation and negotiation stage with the Museum prior to any new supporter agreement being signed. Here both parties work together to tailor make a unique supporter package, with both sides making commercially sensitive requests around funding and benefits.
11. During the cultivation and negotiation stage, both parties review and discuss the funding that has been received over the course of the current corporate supporter agreement. This funding will form the basis of discussions over future funding that the Museum may seek.

12. The Museum has noted that the funding for the current supporter agreement has not been made public to date nor are its competitors aware of how much the Museum has received. The Museum has said that if this was made public, it would be significantly detrimental to its negotiating hand as its competitors could use this information to make a rival offer and secure the limited funding offer available.
13. The Museum has confirmed that it relies on external supporters to deliver its core functions and to help fulfil its public task. As the economic crisis worsens, the Museum must take all steps during negotiations to ensure it obtains the best offer to enable it to continue to fulfil its public task.
14. The Museum's finances were hit particularly hard due to Covid as it faced a considerable drop in donations, visitors, and trade. This income has not yet recovered post Covid. The Museum says it is therefore important it takes all steps to ensure that it protects its charitable income during its financial recovery; this includes not releasing commercially sensitive information during the lifetime of an agreement.
15. The Museum maintains that the market for corporate sponsorship has become increasingly competitive, as institutions compete to maximise sponsorship income by offering enhanced benefits, distinctive 'offerings' and a more professional approach in terms of structures and personnel.
16. This will mean that the Museum must take all appropriate steps to present itself as a sound organisation to invest in, placing the Museum at competitive advantage over its competitors.
17. The Museum therefore maintains that disclosure would:
 - affect the overall finances of the British Museum
 - affect the ability of the British Museum to generate income (including future donations)
 - affect the British Museum's negotiating position
 - affect the British Museum's reputation
 - affect the relationship between the British Museum and its corporate supporter.
18. The Museum considers that disclosing commercially sensitive information relating to an agreement would be likely to result in BP reducing any future funding offers as it would break down commercial trust between the two organisations. The Museum confirmed that it has provided information regarding historical agreements with BP in response to previous requests for information, and it reiterates that this information solely covers the agreement as detailed in the background section of its submission. The Museum acknowledges that once this

agreement has ended commercial sensitivity will reduce over time and information can be considered for disclosure into the public domain in agreed timescales without prejudicing the Museum's commercial interests.

19. The Museum considers that disclosing commercially sensitive information would be likely to result in other organisations being deterred from financially supporting and working with the Museum.
20. Disclosing commercially sensitive information relating to the agreement, as detailed in the background to the submission, would indicate to third parties that the Museum cannot handle commercial information securely. It also considers that disclosure would be likely to discourage other organisations from financially supporting the Museum if they felt that the Museum would only enter supporter agreements of similar value to BP.
21. The Museum considers that disclosing commercially sensitive information would result in other organisations, who offer similar goods and services such as other cultural institutes, to see the Museum's negotiating hand. This would directly impact on its ability to compete fairly against other organisations and would hinder its ability to secure the best terms and valuable funds upon which it heavily relies.
22. The Museum also considers that disclosure would be likely to affect its negotiations with other potential corporate supporters. As a significant amount of information regarding the current corporate agreement with BP is in the public domain, through 'the mosaic effect', further disclosure would allow other corporate supporters to compare their supporter packages. This would weaken the Museum's future negotiating hand and therefore weaken its opportunity to maximise donations.
23. Finally, the Museum considers that disclosure would be likely to result in a reduction in donations received from the public. The Museum already publishes a significant amount of information regarding its different income streams on its website. It publishes information about its corporate supporter income as well as other donations it receives from individual donors. Disclosing information about one specific donor, without additional context, would likely create the public opinion that the Museum does not need individual donations. But the Museum relies on individual donations to continue its public and charitable tasks and it must take all steps to protect its charitable income.
24. The Commissioner is satisfied that the second test has been met and accepts that a causal relationship exists between disclosing the requested information and prejudice to the Museum's commercial interest. The Museum has explained clearly how its commercial interests

might be prejudiced in a variety of ways and there is no need for the Commissioner to repeat that reasoning or to discuss it further.

25. The third and final test concerns the likelihood of the envisioned prejudice occurring. From its submission to the Commissioner it appears that the Museum's position is that the prejudice would be likely to happen, rather than would happen. This is a realistic level of likelihood which the Commissioner will accept. His decision is therefore that the Museum is entitled to apply section 43(2) to the withheld information, and he will go on to consider the associated public interest test.

Public interest test

26. In their complaint to the Commissioner the complainant summarised the arguments for disclosure that they had presented to the Museum in their request for an internal review.
27. The complainant considers that there is overwhelming pressure, especially on academic and scientific institutions, to stop funding and enabling polluting industries and their "blatant greenwashing" in the pursuit of short-term profits and funding.
28. The complainant has noted the backlash the Museum has already received about this which as included protests. Not disclosing the requested information hurts the Museum's own reputation by not demonstrating complete transparency about this issue.
29. The complainant also says that, unlike other FOIA exemptions (such as the national security exemption), the commercial interests of companies "directly involved with contributing to the climate crisis" should not take precedence over the public interest [in avoiding a climate crisis]. This is not least because these companies are all part-taxpayer funded as well, so it is not just a casual interest the public has, it is one the public has a financial stake in. The complainant states that the public has made its mind up unequivocally about divestment from the fossil fuel industry, as every single objective opinion poll conducted over the last year illustrates. Ultimately the public has a right to know what money is going into public institutions.
30. In their request for an internal review, the complainant also cited articles about the Museum's relationship with BP in the Guardian and the Art Newspaper which they considered supported their position that the information should be disclosed.
31. In its submission to the Commissioner, the Museum acknowledged that there is the following public interest in disclosing the information for the following reasons:

- There is a public interest in the relationships that the Museum has with corporate supporters, including those from the fuel and energy sector.
 - There is a public interest in the Museum's finances.
 - There is a public interest in understanding how the Museum is funded.
32. The Museum has also provided the Commissioner with its public interest arguments for maintaining the exemption.
33. It says it relies on external supporters to deliver its core functions and to help fulfil its public task. Where corporate supporters provide funding for one or more of its functions, they enter into corporate supporter agreements which are negotiated on an individual level. As one or more of the Museum's agreements are currently nearing the end of their term, the Museum needs to ensure it positions itself to ensure that any future agreements with future supporters represent the best value for money.
34. The Museum also publishes information about its finances including how it receives funding in its annual reports. This information is available on its website.
35. In addition:
- There is a strong public interest in the Museum protecting its current and future income streams.
 - There is a strong public interest in the Museum maintaining a competitive commercial position to negotiate for any future agreements with any current or perspective corporate supporters.
 - There is a strong public interest in the Museum maintaining a competitive edge over other organisations in its sector who all seek funding from the same sources.
 - There is public interest in ensuring that the Museum maintains strong working relationships with its existing corporate supporters.
 - There is public interest in publishing information in line with regulatory guidance. This includes policy documents and the Commissioner's decisions on the same subject matter in the past such as FS50655610¹. The Museum therefore accepts that further

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2017/2014138/fs50655610.pdf>

information should be made available once agreements have ended and cool off periods have concluded. It is however in the public interest not to disclose information until this has occurred.

- The Museum has provided information in response to FOI requests about historic funding received from BP. It acknowledges that there is public interest in operating transparently but considers there is a stronger public interest in withholding information that could be detrimental to its ability to raise funds which ultimately would place more pressure on the public purse.
 - There is a public debate around the relationship between cultural institutions and organisations in the fuel and energy sector. However, the Museum maintains that disclosing this information would neither add to nor inhibit public debate on this subject matter.
36. The Museum has concluded its submission by confirming its view that the balance of the public interest favours withholding the information rather than disclosing it.
37. The Museum acknowledges that the complainant submitted additional arguments [in their request for a review] which they felt tipped the public interest test in favour of disclosure. However, the Museum wishes to confirm that it is currently subject to targeted campaigns from a small group of individuals who wish to see the end of the Museum's relationship with BP. This group has organised a series of demonstrations both in person at the Museum and online. The Museum says that the Guardian and Arts Newspaper articles the complainant has cited rely heavily on this pressure group's opinions of BP's funding with the Museum. It therefore does not consider that the interests of a small pressure group represent those of the general public.
38. Furthermore, the Museum considers that FOIA was introduced to hold British public authorities to account. Whilst the Museum receives funding from BP, it considers that the public interest arguments raised by the complainant aim more to hold BP to account than the British Museum. The information that is already in the public domain through the Museum's publication scheme and previous disclosures can reasonably hold the Museum to account in regard to its current commercial relationships. Any further information would negatively impact the Museum's ability to deliver its public and charitable tasks.
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39. The Commissioner could not fail to be aware of the concerns about fossil fuel's impact on the environment and he is aware of the pressure on certain public bodies to cease receiving funding from fossil fuel companies.
40. The Commissioner has found in this case that disclosing the information the complainant has requested – how much funding the Museum received from certain fossil fuel companies – would be likely to prejudice its commercial interests.
41. In terms of the public interest matters the complainant has discussed, it is sufficient, in the Commissioner's view, to know that of the companies the complainant referred to, the Museum currently receives funding from BP. The amount of that funding is somewhat immaterial. He considers that, in the competitive arena in which the Museum operates, there is greater public interest in the Museum being in as strong and competitive a position as possible so that it is able to carry out its core functions and public charitable objectives. The public interest in transparency is met satisfactorily through the funding information the Museum proactively publishes, including information it publishes once funding agreements have come to an end. Having considered both parties' arguments, the Commissioner is satisfied the public interest favours protecting the Museum's commercial interests by not disclosing the requested information.

Right of appeal

42. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

43. 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.
44. 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

Cressida Woodall
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