

FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Date: 20th June 2005

Name of Public Authority: National Maritime Museum

**Address of Public Authority: Park Row
Greenwich
London SE10 9NF**

Nature of Complaint

The Information Commissioner (the "Commissioner") has received a complaint that on 12 January 2005 a request was made under the Freedom of Information Act 2000 (the "Act") to the National Maritime Museum ("NMM") for the following information:

Documents and correspondence relating to any payments made to Conrad Shawcross for his exhibition "Continuum" which was staged at Queen's House at the NMM.

The complainant alleges that:

The NMM failed to provide him with that information in accordance with their obligations under Section 1(1) because they applied the Section 43(2) (Prejudice to commercial interests) exemption from disclosure inappropriately.

The Commissioner's Decision

Under section 50(1) of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner has a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

The Commissioner's decision is as follows:

Section 43(2) states that "*Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).*"

The Commissioner agrees that this exemption applies and has decided that the public interest in maintaining this exemption currently overrides the public interest in disclosing the requested information. A further explanation of this decision is provided in the attached Statement of Reasons.

Action Required

In view of these matters the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he does not require any remedial steps to be taken by the National Maritime Museum.

Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 600 0277
Arnhem House Support Centre	Fax: 0116 249 4131
PO Box 6987	Email: informationtribunal@dca.gsi.gov.uk
Leicester	
LE1 6ZX	

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 20th day of June 2005

Signed: Graham Smith

Position: Deputy Commissioner

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Statement of Reasons

The National Maritime Museum (“NMM”) asserted that the release of the requested information would prejudice both their commercial interests and the commercial interests of Conrad Shawcross and that therefore the S43 commercial interests exemption applies.

Section 43(2) states that *“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”*

The commercial interests exemption is a qualified exemption and subject to a public interest test. NMM asserted that the public interest in maintaining the exemption outweighed the public interest in releasing the information.

The Commissioner reviewed the information in question and agreed that the commercial interests exemption applies. This is because the information comprises details of the financial arrangements made between NMM and Conrad Shawcross for the latter’s contribution to NMM’s New Visions programme. Having agreed that the exemption applies, the Commissioner then considered the public interest arguments for and against maintaining that exemption. In doing so, he took into account the potential prejudice to both NMM and to Mr Shawcross.

The public interest test - Prejudice to NMM’s commercial interests

The Commissioner recognises the public interest in financial transparency and accountability where public authorities commission new works of art, particularly where that is not their core activity. The commissioning of works of art is not the core activity of NMM. The disclosure of the requested information may also inform the debate about museum funding in that it relates to the choices a free-to-access, publicly subsidised museum has made to attract greater visitor numbers and generate revenue in competition with other attractions (including non-subsidised attractions).

However, the Commissioner understands that at the time the request was made (January 2005), the NMM was involved in active negotiations with another artist for their New Visions programme. The Commissioner recognises that premature release of the financial arrangement between NMM and Conrad Shawcross would be likely to prejudice the NMM’s bargaining position in respect of these active negotiations for a similar project to the extent that the public interest in maintaining the exemption outweighs the public interest in releasing the information. The Commissioner gave particular weight to the fact that NMM were dealing with public funds and needed to ensure value for public money.

The Commissioner also considers that the likelihood of prejudice will diminish with time and with the conclusion of the active negotiations to the point where any prejudice to the NMM’s commercial interests would no longer outweigh the public interest in releasing the information that the complainant requested.

The public interest test – Prejudice to Conrad Shawcross’ commercial interests

The Commissioner recognises the potential prejudice to Mr Shawcross’ commercial interests by the release of the requested information. The Commissioner also acknowledges the public interest in encouraging new artists and entrepreneurs to flourish and the role that public authorities can play in bringing them to wider attention. By withholding this information until Mr Shawcross had negotiated his next sale or commission, arguably the public authority would be affording Mr Shawcross an important degree of commercial protection at a crucial stage of his career.

However, the Commissioner was not persuaded that the potential prejudice to Mr Shawcross’ commercial interests was, of itself, sufficient reason to maintain the exemption. The Commissioner is of the view that those who engage in commercial activity with the public sector must expect that there may be a greater degree of openness about the details of those activities than had previously been the case prior to the Act coming into force.

Summary of the Commissioner’s decision

The Commissioner has decided that the public interest in protecting NMM’s bargaining position during active and contemporaneous negotiations for a project of a similar nature overrides, for the time being, the public interest in making public the financial details of the negotiations which immediately preceded those active negotiations. The Commissioner notes that as a consequence of this decision, the potential prejudice to Mr Shawcross’ commercial interest will also be avoided because the requested information relates to both parties. However, it is the Commissioner’s view that the potential prejudice to Mr Shawcross’ commercial interests is not, of itself, sufficient reason to maintain the exemption.