

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 May 2007

Public Authority: Department for Culture, Media and Sport
Address: 2-4 Cockspur Street
London
SW1Y 5DH

Summary

The Complainant requested all internal documents from the Department of Culture Media and Sport (DCMS) relating to the purchase of art works by an individual and the National Council for Art Culture and Heritage (NCAH) in Qatar. The Complainant also requested communications between DCMS and any outside bodies regarding the purchases. DCMS disclosed all the communications it held with outside bodies but refused to disclose internal documents relating to the individual or the NCAH under sections 40, 41 and 44 and on the grounds of cost. During the course of the investigation the Commissioner established that the cost limit was being applied to all the information being withheld and so focused his investigation on this. The Commissioner's decision is that to obtain and disclose the information in the remainder of the request would exceed the appropriate cost limit. The Commissioner therefore requires no steps to be taken.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant requested the following information from DCMS on 3 January 2006:

"1. All internal DCMS documents (including emails, memos, minutes, telephone transcripts etc) relating to any aspect of purchase of art works by [a named individual]. These documents should cover the last five years.

- 2. All internal DCMS documents concerning the purchase of art works in the UK by the National Council for Arts, Culture and Heritage which is based in Qatar. These documents should cover the last five years.*
- 3. All communication between the DCMS, (including any individual member of the ministerial team,) and any outside bodies (including the UK and overseas art institutions, and other government departments) relating to purchases made by [the named individual] or the NCAH over the course of the last five years.*
3. On the 31 January 2006 DCMS responded to the complainant clarifying what information it held in relation to each point of his request.
4. In relation to the first and second points of the complainant's request, DCMS stated it held a number of export licences under Council Regulation (EEC) No 3911/92 and the Export of Objects of Cultural Interest (Control) Order 2003 and correspondence in relation to such licences. DCMS explained it was withholding this information as disclosure of information supplied in relation to applications under the Council Regulation is confidential, in accordance with the provisions of Regulation (EEC) no 1468/81 (now Council Regulation 515/97). DCMS stated that unless such information has reached the public domain it is debarred from disclosing it pursuant to their Community obligations. DCMS therefore engaged the exemption under section 44 of the Act (Prohibitions on disclosure). It also stated the information was being withheld under section 41 (Information provided in confidence) and section 40 (Personal information) as some the information was the personal data of the individual, disclosure of which would breach the first Data Protection principle.
5. DCMS also confirmed to the complainant that a number of applications made on behalf of the individual were considered by the Reviewing Committee for the Export of Works of Art and Cultural Objects and that they held information including correspondence relating to meetings of the Committee, statements and other information in relation to objects being considered by the Committee. DCMS stated it was unable to release any of this information as disclosure would breach the duty of confidentiality under Council Regulation 3911/92 which therefore engages section 44 of the Act. DCMS also stated the information was being withheld under section 41 and 40 as the disclosure would reveal what items have been purchased by a particular person or individual.
6. DMCS also explained in its refusal notice that to retrieve the information falling within the scope of the complainant's request in points one and two would exceed the appropriate cost limit as set out in the Freedom of Information and Data Protection (Appropriate limit and fees) Regulations 2004. DCMS stated that information relating to pre-2002 licences was retained in a card index system (which did not record the owner) and it would therefore not be possible to identify which applications have been made by the individual or the National Council without reviewing the card for every export licence application received over the period, and to do so would exceed the appropriate limit of £600.
7. In relation to the third aspect of the complainant's request DCMS stated it was enclosing all correspondence it held but had redacted information which is subject

to legal professional privilege and therefore exempt under section 42 of the Act. DCMS stated it was satisfied that the public interest in maintaining this exemption outweighed the public interest in disclosure.

8. On 4 December 2006 the complainant requested an internal review of the decision to withhold the requested information. In particular the complainant requested DCMS review the application of the exemptions under section 40, 41, 42 and 44.
9. The outcome of the internal review was communicated to the complainant on 11 April 2006. DCMS upheld the application of the exemptions in relation to points one and two of the request. In relation to point 3 of the request DCMS found that of the three redactions to which the correspondence had been subjected, two of the redactions concerned information not covered by the request and this was then disclosed. However, one email was still redacted of some information as it was legal advice and as such DCMS felt the information was exempt from disclosure under section 42 of the Act (Legal Professional Privilege)

The Investigation

Scope of the case

10. On 26 April 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. The Commissioner set out to investigate first whether the appropriate cost limit applied to all the information falling within the scope of the request and, following this, whether DCMS was justified in relying on the exemptions under sections 40, 41, 42 and 44. The complainant's original request did not mention export licences, however both the refusal notice and internal review had interpreted the request to include them. The Commissioner therefore set out to clarify how the information requested related to the application for export licences.
12. The Commissioner has not investigated the application of section 42 for the following reasons:
 - DCMS disclosed all the information it held in relation to point three of the complainant's request
 - After clarifying with DCMS what information was redacted under section 42, the Commissioner found that the redacted information consists of legal advice from DCMS to the Export Licensing Manager on their legal obligations for handling and FOI request. The Commissioner therefore found that the redacted information did not fall within the scope of the complainant's original request

Chronology

13. On 11 January 2007 the Commissioner began his investigation by writing to DCMS asking for clarification as to which parts of the information requested were being withheld under section 12 (Cost limit), a copy of the remaining information being withheld and further explanation as to the application of each exemption. The Commissioner also wrote to the Complainant to clarify how the issue of export licences fell within the scope of his original request.
14. On 17 January 2007 the complainant responded to the Commissioner, stating that he was content to have the issue of export licences removed from the scope of his request provided this did not undermine any of the points in his request.
15. On 19 January 2007 the Commissioner wrote to DCMS to request comment as to how the request in points one and two was interpreted to be a request in relation to export licences and to consider if compliance with the request could be met without providing information regarding export licences.
16. On 8 February 2007 DCMS responded to the Commissioner explaining how the complainant's request related to export licences, which parts of the request were withheld on the grounds of cost and further explanation regarding the application of the exemptions.
17. The Commissioner wrote to DCMS on 12 February 2007 to clarify that there was no other information held by DCMS or MLA which related to the complainant's request other than that already disclosed or withheld under an exemption. The Commissioner also requested further information regarding the information redacted under section 42.
18. DCMS responded to the Commissioner on 20 February 2007, clarifying that it held no additional information in relation to the first two parts of the request which could be supplied within the cost limit and explaining the application of section 42.

Findings of fact

19. DCMS responded on behalf of the Museums, Libraries and Archives Council (MLA) as it is this body, since April 2005, responsible for granting export licences in relation to works of art. All files held by DCMS prior to this date were transferred to MLA. It is the practice of DCMS where a request is received to which both DCMS and MLA may hold information, to prepare a joint response and to interpret requests broadly to include information held by both DCMS and MLA. DCMS is therefore the public authority for the purposes of this complaint.
20. DMCS explained that certain works of art and other cultural objects cannot be exported from the UK without an export licence. A separate file is created in relation to each application for an export licence. Information contained in the files will consist of the export licence application itself along with any supporting documents, correspondence with the applicant and where applicable correspondence with expert advisors. Any information held in relation to the complainant's request would have been supplied to DCMS or MLA in connection

with an application for an export licence and therefore the information held by DCMS or MLA covered in the scope of the request will be held in the export licensing files.

21. DCMS is of the view that the information requested in the points one and two of the complainant's request is covered by section 12 of the act, as to obtain the information from the export files would exceed the appropriate limit as set out in the Freedom of Information and Data Protection (Appropriate limit and fees) Regulations 2004.
22. In relation to the third part of the request all the information held by DCMS has been disclosed to the complainant barring a redacted email. This has been redacted on the grounds of legal professional privilege and it has been established that the information redacted was not covered by the scope of the complainant's request.

Analysis

Procedural matters

Section 12

23. DCMS stated that to obtain the information requested in points one and two of the complainant's request would exceed the appropriate limit as set out in the Appropriate Limit and Fees Regulations 2004. These regulations set a limit to the cost of complying with the request for central government departments of £600. In estimating the cost of complying a public authority can take the following into account:

- Determining if the information is held
- Locating the information
- Retrieving the information
- Extracting the information

The regulations permit cost to be calculated at a rate of £25 per person per hour for the cost limit to be reached.

24. The complainant requested information covering the last five years and DCMS provided an explanation as to why for each period locating the information would exceed the appropriate limit.
25. For the period January 2001 – December 2001 the index of export licences applications was contained in a card index which was stored alphabetically by the name of the exporter. Without knowing the name of exporter or the date the licence was granted the only way of identifying applications from either the individual or the NCAH would be to review each index card for each licence application and then recall the files. In support of its position DCMS explained that between 1 July 2001 and 30 June 2002, 10,193 items were granted export licences following referral to an expert adviser. This figure does not include those

not referred to an adviser.

26. From January 2002 onwards the information regarding export licences was recorded electronically. The electronic database does not record the name of the owner to whom the items was being exported. DCMS state that to identify all the applications for the period relating to the request, it would be necessary to recall and review all the files for applications relating to exports of art and cultural objects to Qatar. DCMS points out that not all of the works of art exported to Qatar will relate to the individual or NCAH. It further highlighted that a search of the database shows that there were 641 such applications and each file would have to be reviewed to determine if it fell within the scope of the complainant's request. DCMS also confirmed that the export licence application files are stored in archive boxes and it is not possible to recall a single file. It estimates that there are 300 archive boxes for the period 2001-2005 and that only 50 boxes could be reviewed at any one time, due to space limitations, and this alone would take one day.
27. Where an expert advisor objects to the issue of an export licence, the application is referred to the Reviewing Committee. In its searches DCMS found that there were 16 Reviewing Committee files held which are potentially relevant to export licence applications for the period 2000/01 to 2004/2005. In order to identify the information which is relevant to the request it would be necessary to read all the papers in each file.
28. DCMS state that given the number of files in relation to both the card indices and electronic database as well as the reviewing files it would take considerably more time than allowed by the appropriate cost limit.
29. The Commissioner considered whether, under section 16, DCMS could have provided the complainant with advice and assistance and provided some information within the cost limit. However as the cost limit has been applied to locating the information the Commissioner is satisfied that the volume of information requested is not the issue and the same work would be involved in locating and retrieving any information falling within the scope of the request.
30. The Commissioner is satisfied that to provide the complainant with the information requested in parts one and two of his request would exceed the appropriate limit. The Commissioner has not examined the application of the exemptions 40, 41 and 44 applied in relation to these parts of the request as he has found that the cost limit applies to all the information requested, therefore there is no need to determine if the exemptions would have applied.

Section 17

31. When a public authority applies section 12 to the information requested in its entirety it must within 20 working days give to the complainant a refusal notice which states that fact. There is no further requirement for the notice to contain exemptions which could also apply.
32. In the refusal notice dated 31 January 2006, DCMS explained that the cost limit

had been applied as to obtain the information requested would exceed £600. DCMS also stated which exemptions would apply to information contained within the export licence files.

33. Exemptions should only be applied to information to which the public authority is relying in order to withhold it from disclosure.
34. The Commissioner therefore finds that certain aspects of the refusal notice were not in conformity with section 17 of the Act.

The Decision

35. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

The Commissioner requires no steps to be taken.

Right of Appeal

36. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

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

Dated the 23 day of May 2007

Signed

**Richard Thomas
Information Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Section 12(2) provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

Section 12(3) provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

Section 12(4) provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Section 12(5) – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

Personal information.

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Section 40(5) provides that –

“The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
 - (i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act

- 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
- (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."

Section 40(6) provides that –

"In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded."

Section 40(7) provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
"data subject" has the same meaning as in section 1(1) of that Act;
"personal data" has the same meaning as in section 1(1) of that Act.

Information provided in confidence.

Section 41(1) provides that –

"Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."

Section 41(2) provides that –

"The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence."

Prohibitions on disclosure.

Section 44(1) provides that –

"Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court."

Section 44(2) provides that –

“The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).”