

Freedom of Information Act 2000

Decision notice

Date: 16 May 2013

Public Authority: Greater London Authority
Address: City Hall
The Queens Walk
London
SE1 2AA

Decision (including any steps ordered)

1. The complainant requested information relating to artists who exhibited works of art on the fourth plinth in Trafalgar Square. The Greater London Authority (GLA) refused the request using section 12 of the Freedom of Information Act 2000 (the Act), as complying with the request would exceed the appropriate cost limit. The Commissioner's decision is that GLA has correctly applied section 12, but has breached section 16 of the Act by not providing advice and assistance to the requester. No further action is required.

Request and response

2. On 8 May 2012, the complainant wrote to the GLA and requested information in the following terms:
 1. *"Could you please supply copies of any correspondence and or communications (including emails) between the section of the GLA/Mayor's Office responsible for the fourth plinth and each of the following artists. Please note that I am only interested in correspondence which relates to the artists' own particular contribution to the fourth plinth. It will include but not be limited to correspondence and communications generated prior to the commission being decided. It will also include but not be limited to material generated after the exhibition has finished.*

Elmgreen and Dragset

Yinka Shonibare

Antony Gormley

*Thomas Schutte
Marc Quinn*

- 2. Could you please supply copies of any correspondence and or communications (including emails) between the section of the GLA/Mayor's Office responsible for the fourth plinth and any representative and employee of each of the aforementioned artists. Please note that I am only interested in correspondence which relates to the artists' own particular contribution to the fourth plinth. It will include but not be limited to correspondence and communications generated prior to the commission being decided. It will also include but not be limited to material generated after the exhibition has finished.*
- 3. Could you please provide a list of occasions when the fourth plinth commissioning panel has met. In the case of each meeting can you please provide a date and venue. In the case of each meeting can you please provide a list of those present. In the case of each meeting can you please provide any agendas or minutes."*
3. The GLA responded on 7 June 2012. It refused the request under section 12 of the Act, as complying with the request would exceed the appropriate cost limit established in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations).
4. Following an internal review the GLA wrote to the complainant on 20 September 2012. It upheld the original decision.

Scope of the case

5. The complainant contacted the Commissioner on 26 September 2012 to complain about the way his request for information had been handled.
6. The Commissioner considers the scope of the case to be whether the GLA is correct to refuse the request under section 12 of the Act. He has also considered whether the GLA met its obligations under section 16 to provide advice and assistance to the complainant.

Reasons for decision

Section 12

7. Section 12 of the Act states 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.

8. The Fees Regulations set an hourly rate at £25 per hour for all public authorities, with the appropriate limit for the public authority in question set at £450. This equates to 18 hours of work. When producing an estimate for how long it would take to comply with a request a public authority can consider the time taken in:
- (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.

Estimate provided in the internal review

9. In its internal review the GLA provided an estimate for complying with the request:

Obtaining information from the Royal Society of Arts' (RSA) records	24 hours
Obtaining information from the GLA's on-site and off-site records	24 hours
Obtaining information from the GLA's commissions records	36 hours
"Preparing the identified information"	24 hours
Total	108 hours

RSA records

10. In his investigation the Commissioner sought to establish whether the RSA held recorded information relevant to the complainant's request on behalf of the GLA. As defined under section 3 of the Act, recorded information can only come within the scope of a request if it is held either by the public authority or by another organisation on behalf of the public authority. As the RSA is a registered charity it is not a public authority in its own right, the information referred to in the GLA's estimate would need to be held by the RSA on behalf of the GLA.

11. The GLA confirmed that the information referred to was held by RSA for its own purposes. This means that the information held by RSA did not come within the scope of the complainant's request and so cannot be included in the GLA's estimate.

Preparing the identified information

12. The GLA afforded 24 hours in its estimate to prepare information without providing any indication as how this referred to the activities set out in the Fees Regulations. In response to the Commissioner's questions, the GLA stated that this meant "organising the information and presenting it in such a way that it could be understood in relation to the request".
13. The Commissioner notes that the complainant asked for the some of the information to be placed in a list, and the GLA has a duty under section 11 of the Act to comply where it is reasonable to do so. He also notes that the information would have to be extracted and placed into a document and time should be allowed for this. However, the Commissioner considers that preparing information into a legible form comes outside of the activities allowed for an estimate under the Fees Regulations. The public authority has a duty to provide recorded information, not provide information which is understood by the complainant. As such the time allocated for preparing information cannot be included in the GLA's estimate.

New estimate provided during course of Commissioner's investigation

14. In response to the Commissioner's questions the GLA provided a new estimate:

Locating and extracting relevant information from on-site material (i.e. manual records)	25 hours
Locating, retrieving and extracting information from off-site records	4 hours
Locating and extracting information from electronic files in Culture Strategy team's shared network drive	3 hours
Total	32 hours

15. The Commissioner's decision in respect of whether section 12 applies is based on this estimate. In considering the response given by the GLA, the Commissioner has been mindful of the First-Tier Tribunal judgment in *Randall v Information Commissioner and Medicines and Healthcare*

Products Regulatory Agency¹, which stated that a reasonable estimate is one that is "sensible, realistic and supported by cogent evidence".

On-site records

16. To explain why it would take so long to extract the relevant information from its records, the GLA explained that most of the formal correspondence that has been retained is held in manual form. Not all this correspondence was scanned into its electronic record management system. Therefore, in order to find the relevant information, the GLA's on-site manual records would have to be searched.

17. In its internal review the GLA explained that the time required to search through its manual records arose from the "different systems" employed to record information. When the Commissioner asked what this meant the GLA explained as follows:

'Different systems' refers to the different approaches to record-keeping taken by the different Culture Officers and consultants working within the Culture Strategy team between 2002 and 2012. There is a lack of parity in terms of what kind of information was kept, in what form it was kept, how it was kept, and where it was kept.

Conscious of the lack of consistency in their record-keeping, the Culture Strategy team created a new filing structure in early 2012, organising files by cultural programme (eg Fourth Plinth, Big Dance) rather than by year which was how files were previously stored. This was more appropriate given the fact that work on many programmes starts in one year and continues through the following years.

18. The GLA provided further explanation about its new records system, which has been put in place since early 2012 and has been applied only to information created since then. As well as having separate records for the commissioning round which decided which artist/s would be selected for fourth plinth, it has files divided by contracts, tenders, public programmes, technical information, and then individual files for the artists who were commissioned.

19. The Commissioner has asked for an estimate on how many folders there are for these on-site records which would hold information relevant to the request, however the GLA is adamant that it cannot provide a reasonable estimate without conducting a thorough search of the records. The GLA explained that the relevant correspondence and

¹ EA/2006/0004

minutes of meetings would be across various folders from the different regimes so it is difficult to estimate how much recorded information comes within the scope of the request.

20. The GLA explained that there was confusion over the volume of recorded information that would be relevant due to the different record keeping approaches used across the time period within the scope of the request. This was further complicated by the fact that the tendering process and contract delivery takes place over a number of years which means that relevant information could be held for the same artist in a number of locations.
21. The Commissioner accepts that these complications would make it difficult to identify the relevant recorded information. Whilst he has not received any figures which illustrate the extent of the task he considers that the detail provided by the GLA is sufficiently reasonable so as to show that the task would be close to the figure provided in the second estimate. As such, the Commissioner's decision is that compliance with the request would exceed the appropriate cost limit.

Issues with the GLA's estimate

22. Whilst the Commissioner's decision is that compliance with the request would exceed the appropriate cost limit, he wishes to comment on some of the issues raised by the GLA's estimate and explanations given in response to this request.
23. As previously mentioned, the GLA's original estimate included records that belonged to a registered charity – records which fall outside the scope of the Act. The estimate also included time for activities which are not prescribed within the Fees Regulations.
24. Furthermore, in both estimates the GLA included time for searching its off-site records. The Commissioner notes that the time required for searching through these records was reduced from 24 to 3 hours, which raises doubt over the reasoning for why the original response was such a large figure.
25. During the course of the Commissioner's investigation the GLA stated that "it is not expected that there will be much relevant information" in the off-site records. It further explained that there "could" be relevant information, although there were no descriptions left about the information placed into off-site storage and the documents were not scanned into the GLA's electronic record management system. It was unable to determine whether relevant information was held.
26. The Commissioner considers that this is too speculative to be considered in an estimate that is "sensible, realistic and supported by cogent

evidence". He would recommend that in future the GLA only includes searches which it considers are likely to locate relevant information.

Summary

27. Whilst time taken for off-site records is considered to be speculative and does not meet the recommended approach, the Commissioner's decision is that the time needed to search through the manual on-site records is in excess of 18 hours. As such, it goes beyond the appropriate limit and can be rightly refused under section 12 of the Act.

Section 16

28. Section 16 of the Act states that:

It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

29. The Commissioner considers that when a public authority refuses a request under section 12 of the Act, section 16 obliges it to provide the applicant with suggestions for how the request can be reduced so that compliance would not exceed the appropriate cost limit. The GLA did not provide such advice in either its refusal notice or its internal review. This constitutes a breach of section 16 of the Act.

30. However, after prompting, it did give an indication to the Commissioner of what could be provided. In its response the GLA stated that:

There have been three commissioning rounds managed by the GLA and each round incorporates two commissions (ie two artists). If the request could be limited to just one commissioning round and the off-site archive records be removed from the search requirement, this would sufficiently reduce the number of folders to be searched and should enable all three parts of the request to be answered within the 18 hour limit.

The artists referred to in the original request fall into the following commissioning rounds:

- *Round 1 – Elmgreen and Dragset*
- *Round 2 – Yinka Shonibare and Antony Gormley*
- *Round 3 – Thomas Schutte and Marc Quinn*

31. The Commissioner has included this information for the complainant's attention. He notes that the search of the off-site records is considered

to be speculative and should not be included in a search unless the GLA considers it likely that information will be held there.

Other matters

Internal reviews

32. The GLA took 62 working days to provide the complainant with an internal review of its refusal notice. The Act does not provide a timescale for conducting internal reviews. Instead this is guided by the section 45 Code of Practice. At paragraph 42 it states that "target times" for responding should be "reasonable", although no definitive figure is given. The Environmental Information Regulations 2004 state that the time limit for a review is 40 working days, and the Commissioner considers that this is a useful guide for a "reasonable" time limit for requests made under the Act.
33. With this in mind the Commissioner would ask that the GLA makes greater attempts in future to provide internal reviews within a more reasonable timeframe.

Record keeping

34. In accordance with section 46 of the Act the Lord Chancellor issued a Code of Practice on the management of records. It provides a detailed explanation of the importance of effective record management:

Freedom of information legislation is only as good as the quality of the records and other information to which it provides access. Access rights are of limited value if information cannot be found when requested or, when found, cannot be relied upon as authoritative. Good records and information management benefits those requesting information because it provides some assurance that the information provided will be complete and reliable. It benefits those holding the requested information because it enables them to locate and retrieve it easily within the statutory timescales or to explain why it is not held.

35. The Commissioner considers this to be relevant to this decision and the GLA's record management systems. The Commissioner considers that most of the complications are largely of the GLA's making and could have been avoided with a more effective system in place. However, the Commissioner acknowledges that the GLA has taken steps to improve its records management system. However, in view of the Code of Practice, the Commissioner would encourage the GLA to consider whether to apply this new system to its older records.

Right of appeal

36. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

37. 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.
38. 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

Alexander Ganotis
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