

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 November 2015

Public Authority: Tate Britain

Address: Millbank
London
SW1P 4RG

Decision (including any steps ordered)

1. The complainant has requested Tate to disclose the sponsorship amounts it has received from BP for the period 2007 to 2011. Tate refused the request stating that the requested information was exempt from disclosure under section 43 of the FOIA.
2. The Commissioner's decision is that Tate has acted appropriately by refusing to disclose the requested information under section 43 of the FOIA. He therefore requires no further action to be taken.

Request and response

3. On 8 February 2015, the complainant wrote to Tate and requested information in the following terms:
"Please provide the amounts of sponsorship provided by BP to Tate year on year for from 2007 to 2012".
4. The responded on 4 March 2015 advising the complainant that it required an additional two weeks to consider the request and the public interest considerations.
5. The complainant wrote to Tate on 10 March 2015 to express their dissatisfaction with Tate's extension.
6. Tate responded the same day advising the complainant that it is permitted under section 10(3) of the FOIA to extend the deadline if it requires extra time to consider the public interest test. It advised that it

considered section 43 of the FOIA was engaged but was still considering the public interest test.

7. Tate responded in full on 20 March 2015. It stated that it considered the requested information was exempt from disclosure under section 43 of the FOIA. It confirmed that it had considered the public interest test and had reached the view that the public interest rested in maintaining the exemption in this case.

Scope of the case

8. The complainant first contacted the Commissioner on 17 March 2015 to complain about the way their request for information had been handled. Tate's refusal notice was then issued on 20 March 2015. The Commissioner's investigation commenced on 13 May 2015 after it was decided to accept the complaint prior to Tate's internal review procedure being exhausted.
9. The complainant clarified that they require the sponsorship amounts per year from 2007 to 2011; not 2012. This has been the focus on the Commissioner's investigation and Tate's application of section 43 of the FOIA.

Background

10. The complainant first requested the disclosure of this information on 12 April 2012. The information request made at this time was for BP sponsorship amounts over a 23 year period. Tate refused the disclosure of all the requested information under section 43 of the FOIA.
11. The Commissioner conducted an investigation under case reference FS50493467 and issued a decision notice upholding Tate's application of section 43 of the FOIA on 10 December 2013. The notice can be accessed via the following link:
https://ico.org.uk/media/action-weve-taken/decision-notices/2013/930074/fs_50493467.pdf
12. The complainant appealed the decision notice to the First-tier Tribunal. The case was heard and the tribunal issued its decision on 22 December 2014. The tribunal's findings can be accessed via the following link:
[http://www.informationtribunal.gov.uk/DBFiles/Decision/i1438/Montague,%20Brendan%20&%20Tate%20Gallery%20EA.2014.0040,%200070%20&%200071%20\(22.12.2014\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1438/Montague,%20Brendan%20&%20Tate%20Gallery%20EA.2014.0040,%200070%20&%200071%20(22.12.2014).pdf)

13. The tribunal considered the application of section 43 of the FOIA to BP's sponsorship amounts over a 23 year period. It ruled that section 43 of the FOIA was not engaged for those years running up to 2007 and therefore ordered disclosure. For the years 2007 to the date of the request in 2012, the tribunal decided that section 43 of the FOIA was engaged and that the public interest in disclosure was outweighed by the public interest in maintaining the exemption.
14. As detailed above, the request the subject of this notice is for the sponsorship amounts from 2007 to 2011. The Commissioner has considered this fresh request on its own merits and in accordance with the circumstances at the time the request was made in February 2015.

Reasons for decision

15. Section 43 of FOIA states that information is exempt if its disclosure would or would be likely to prejudice the commercial interests of a public authority, a third party or both.
16. Section 43 is a qualified exemption. Therefore, in addition to demonstrating that disclosure would or would be likely to prejudice the commercial interests of Tate, a third party or both, it also needs to apply the public interest test. For this, Tate needs to consider the public interest arguments for and against disclosure and establish whether the public interest is best served by maintaining the exemption or by disclosure.
17. Tate argued that disclosure of the BP sponsorship amounts post 2007 would be likely to prejudice its own commercial interests. It referred the Commissioner to a confidentiality clause in the sponsorship contract with BP which states that all financial information should be kept confidential and only in exceptional circumstances should it be disclosed. Tate confirmed that disclosure of this information would be likely to be considered as a breach of contract and would be likely to prejudice its ongoing commercial relationship with an important long standing sponsor.
18. Tate explained that it relies heavily on sponsorship from BP and other sources to enable it to carry out its functions, particularly in the current economic climate of funding cuts. It relies on a mixed model approach of balancing public funding, earned income from retail and catering and private and corporate funding in order to fund its programmes. If this information was disclosed and it damaged Tate's commercial relationship with BP and potentially other sponsors this would have a negative impact on Tate's ability to promote the public's understanding and enjoyment of art. It would be likely to prejudice Tate's ability to

generate income from corporate sponsors and reduce revenues from other sources such as catering, retail, membership and tickets which are derived from the exhibitions and displays that such funding enables Tate to mount.

19. Tate referred to the recent First-tier Tribunal hearing referenced in paragraph 14 above and stated that the tribunal accepted that section 43 of the FOIA was engaged for post 2007 sponsorship amounts. Tate confirmed that it did not consider the circumstances had changed so significantly since the complainant's first request and this hearing to warrant the withdrawal of the application of this exemption. Tate stated that the tribunal agreed that disclosure of this information would be likely to be releasing into the public domain a price list for the sponsorship package offered to BP. This is because it is fairly obvious from reviewing the services and exhibitions Tate currently offers what types of benefits BP receives for its sponsorship. Disclosing a price list in this manner would be likely to prejudice Tate's ability to secure the best possible sponsorship arrangements from other private and corporate sources. And, as stated above, a reduction in sponsorship will have a negative impact upon the services Tate is able to offer the general public.
20. For the above reasons, Tate is of the opinion that section 43 of the FOIA is engaged in this case.
21. The Commissioner is satisfied that disclosure would be likely to prejudice the commercial interests of the Tate and section 43 of the FOIA does apply to the sponsorship amounts post 2007. He will now explain why.
22. The Commissioner notes the decision reached by the tribunal in the hearing of *Brendan Montague v Information Commissioner & Tate Gallery* (EA/2014/0040, 70/71). He is aware that the tribunal decided that section 43 of the FOIA did not apply to BP's sponsorship pre 2007. However, the Commissioner acknowledges that the tribunal did consider section 43 of the FOIA applied to the sponsorship amounts post 2007 at the time of the information request the subject of this hearing (2012).
23. At paragraph 33 of this decision, the tribunal stated:
24. "Having reviewed the evidence given in both open and closed sessions, we accept this part of his evidence [Mr Aydon on behalf of Tate], and find that s43(2) is engaged, as regards the current and recent sponsorship figures (viewed as at the time of the information request). "
25. The tribunal draws attention to the fact that the 2007-2011 sponsorship deal with BP had recently expired at the time of the 2012 request. Its decision to uphold the application of section 43 of the FOIA to post 2007

amounts appears to be suggesting that it considered the current deal (2012 onwards) and the one preceding it and, the individual sponsorship amounts for each of these years, is commercially sensitive.

26. At the time of the request the subject of this notice (February 2015) the circumstances had not changed significantly. The Commissioner notes that Tate and BP were still within the same sponsorship contract as it was in 2012 for the period 2012 to 2017 and the period 2007 to 2011 (for which the information is requested) still remained the most recent expired contract preceding the current. During the Commissioner's investigation Tate confirmed that negotiations for the next sponsorship deal with BP would commence this Autumn for the period 2017 onwards.
27. The Commissioner accepts that the benefits enjoyed by BP for the sponsorship it provides are very much on show or could be easily determined. Providing the sponsorship figures from 2007 onwards would be providing a 'price list' as Tate claims for the benefits BP enjoys. Other sponsors of Tate or potential future sponsors could then work out what BP receives for the amount of sponsorship it offers and this could hinder Tate's ability in future to secure as favourable terms. Tate has to compete for sponsorship and regularly participates in negotiations to secure such revenue. If existing sponsors whose contracts had come to an end or potential new sponsors were aware of what benefits other sponsors enjoy, this would be likely to hinder Tate's ability to negotiate fairly and as competitively as it has done in the past.
28. As the Commissioner is satisfied that section 43(2) of the FOIA does apply, he now needs to go on to consider the public interest test.
29. Tate argued that a breach of confidentiality under this agreement would be likely to damage its reputation, position and credibility in future commercial arrangements and such consequences are not in the public interest. It considers there is a clear public interest in withholding this information as this would protect Tate's integrity in commercial negotiations ensuring that it can raise funds independently of grant in aid and therefore deliver the maximum value for the public and ensure the delivery of its work across its entire operations efficiently and economically.
30. Tate referred again to the fact that sponsorship is vitally important to it as an organisation particularly in light of the current economic climate and continual reduction in public funding.
31. Tate acknowledged that disclosure would aid transparency and accountability further. However, it is clear that there has already been significant public debate and widespread press coverage over BP's sponsorship of Tate and this was assisted by the decision of the tribunal

in the case of *Brendan Montague v Information Commissioner & Tate Gallery* (EA/2014/0040, 70/71). It considers any further public interest in the disclosure of post 2007 figures is limited and is outweighed by the clear public interest in maintaining the exemption.

32. The Commissioner agrees that there is a public interest in the disclosure of the sponsorship amounts post 2007. He acknowledges that the disclosure of the pre 2007 figures has enhanced public interest and received press coverage. The disclosure of the post 2007 figures would aid public understanding further and promote further transparency and accountability.
33. However, it is the Commissioner's decision in this case that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exemption. Although there are public interest arguments in favour of disclosure the Commissioner considers that they are limited due to the amount of information already in the public domain concerning BP and Tate's commercial relationship and there are stronger public interest arguments in maintaining the exemption. It has been accepted that the disclosure of the current and most recent expired contract with BP would be likely to hinder Tate's commercial interests in future sponsorship arrangements. As the benefits BP receives for its sponsorship are evident throughout services and exhibitions Tate offers, disclosure of the amounts received year on year from 2007 onwards would disclosure a 'price list' to other sponsors.
34. Tate has to compete against other institutions for sponsorship and regularly enters into discussions with existing sponsors and potential new sponsors. If Tate's ability to secure the best possible deal was hindered, this would have a negative impact on the services it is able to provide and ultimately the enjoyment of the public and this is not in the public interest.
35. It has already been acknowledged that sponsorship is a key source of revenue for Tate and other art institutions, particularly in the current economic climate and continuing cuts to public funding. It is important that Tate maintains its ability to compete fairly and effectively and this should be protected. It is not in the public interest to disclose commercial information which would be likely to prejudice Tate's ability to secure such revenue and the best possible terms it can going forward.

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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

Steve Wood
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