

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 August 2017

Public Authority: The Science Museum Group ("SMG")

Address: Science Museum
Exhibition Road

London

SW7 2DD

Decision (including any steps ordered)

1. The complainant has requested information in relation to sponsorship of the SMG by certain oil companies. The SMG refused to disclose some of the requested information, citing section 43(2) as a basis for non-disclosure.
2. The Commissioner's decision is that the SMG has correctly applied section 43(2) to the withheld information.
3. The Commissioner therefore requires no steps to be taken.

Background to request

4. SMG is the world's leading alliance of science museums comprising the Science Museum in London, the National Railway Museum in York and Shildon, the National Science and Media Museum in Bradford, and the Museum of Science and Industry in Manchester. Its collection spans science, technology, engineering, mathematics and medicine and it attracts over 5 million visitors each year.
5. Wonderlab: The Statoil Gallery (the "Gallery") opened in October 2016 and replaced SMG's existing Launchpad gallery. The Gallery is SMG's most ambitious interactive science gallery and features interactive exhibits, artworks, live demonstrations and immersive experiences

led by science communicators. The Gallery is 60% larger than Launchpad and includes two live demonstration areas and a 120-person capacity showspace.

6. As with many other cultural institutions in the prevailing government funding environment in recent years, SMG is under increasing pressure to reduce reliance on government funding via Grant in Aid. According to SMG's most recent set of published accounts, Grant in Aid received from DCMS fell by £2.0m from £42.4m in 2014-15 to £40.4m in 2015-16 and accounts for approximately 50% of SMG's income. Sponsorship and philanthropy are therefore an increasingly important and necessary part of SMG's financial sustainability, a source of income upon which SMG is increasingly reliant.
7. Oil company sponsorship of cultural institutions has been the subject of significant campaign activity in recent years, with a number of different campaign groups seeking to end oil sponsorship of the arts. Campaigners have a shared view that sponsorship of cultural institutions help create a 'social licence to operate' and such arrangements are a manner of distracting attention from the environmental (and other) impacts of oil companies.
8. There has been particularly intense campaign activity centred on BP's sponsorship of Tate and the British Museum, although campaign activity has also been directed at SMG arising from previous sponsorship arrangements with Shell and from the sponsorship of the Gallery, for example, disruptive activities on the opening day. An open letter criticising the sponsorship deal was organised and published in the *Guardian*.

Request and response

9. On 17 June 2016, the complainant wrote to the Science Museum and requested information in the following terms:

"Under the Freedom of Information Act 2000, I request that you disclose the following information:

1) Details and copies of correspondence between the Science Museum and any member of staff at Statoil between the dates 15 March-15 June 2016. This should include electronic and written communications, or any other materials deemed relevant, such as notes from telephone conversations.

2) The amount paid by Statoil in order to be the title sponsor of the Science Museum's new 'Wonderlab : The Statoil Gallery' and by Ureenco to be the major sponsor.

- 3) To confirm whether Statoil, Urenco or any members of their staff have played/will play any role in the curatorial decisions related to 'Wonderlab: The Statoil Gallery' or advise on its content in any way.
 - 4) If the answer to 3) is 'yes,' please specify in as much detail as possible the nature of that involvement."
10. The SMG responded to the complainant's request on 13 July 2016. It confirmed that it held information relevant to the complainant's request. It provided the complainant with some information in relation to part 1) of the request (some was redacted, citing the exemptions at sections 22, 31, 40, and 43(2)). It also provided information in relation to parts 3) and 4) of the request, however it withheld the information requested in part 2) of the request, citing sections 41 and 43(2) of the FOIA as a basis for non-disclosure.
11. On 9 September 2016 the complainant requested an internal review of the SMG's handling of his request, with particular focus on part 2) of the request. The SMG responded to the complainant's request for internal review on 7 October 2016. The reviewer decided that section 41 of the FOIA did not apply to the information requested in part 2), however section 43(2) was still deemed to be engaged in respect of that information.

Scope of the case

12. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He wished the Commissioner to focus particularly on the SMG's response to part 2 of his request. He stated that:-
- "the focus of the internal review and my challenge of the museum's decision not to disclose sponsorship figures is concerned with Statoil only."
13. The Commissioner has considered the way in which SMG handled part 2 of the complainant's request in relation to Statoil only ("the withheld information.")

Reasons for decision

14. Section 43 of the FOIA states that a public authority may refuse to disclose information if it considers disclosure would or would be likely to prejudice its own commercial interests or those of a third party.
15. Broadly speaking, section 43(2) protects the ability of a party to

participate competitively in a commercial activity, for example the purchase and sale of goods or services. The successful application of section 43(2) is dependent on a public authority being able to demonstrate that the following conditions are satisfied: –

- Disclosure of the requested information would, or would be likely to, prejudice the commercial interests of any party (including the public authority holding it).
- In all the circumstances, the weight of the public interest in maintaining the exemption outweighs the public interest in disclosure.

The SMG's position

The relevant commercial activity

16. The SMG has informed the Commissioner that it competes with other cultural institutions and charities to attract corporate sponsorship and donations from private philanthropists. The SMG has a compelling commercial interest in maximising the income generated from such partnerships and from securing value for money from sponsorship arrangements. The Commissioner accepts that this is a relevant commercial activity for the purposes of section 43(2). The complainant has argued that sponsorship from oil companies such as Statoil is a very limited funding stream, and that the SMG receives funding from government and other public bodies, contrasting such sponsorship with examples such as a recent donation to the SMG of £8 million from the Heritage Lottery Fund. However, as outlined in paragraph 7 above, the SMG is coming under increasing pressure to reduce its reliance on Grant in Aid, therefore making private and corporate sponsorship an increasingly important source of funding upon which the SMG is becoming increasingly reliant.
17. In recent years, 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.

Likely prejudice to the SMG's commercial interests

18. According to the SMG, disclosure of the withheld information would be likely to prejudice the SMG's commercial interests for the following reasons:

- First, disclosure would be likely to reveal 'to the world' the cost of sponsorship and the associated benefits, which would be likely to prejudice the SMG's ability to obtain value for money from sponsors and would damage the SMG's bargaining position. In particular, given the timing of the request, disclosure would reveal the current cost of sponsorship, without any of the natural changes to 'market conditions' for sponsorship as the figures become more historic;
- The SMG's Development team is particularly concerned about how disclosure of the withheld information could damage effective working relationships with Statoil. It states that the success of a working relationship depends on honest, open and regular communication, beyond the letter of the contract, and requiring a cooperative approach – especially when things go wrong. By way of specific examples:
- The SMG is about to close the Gallery for a month for remedial work – Statoil could have expressed their dissatisfaction and frustration at this, (whereas to date they have been cooperative with this closure);
- Over the past few months, some exhibits have either been broken, or have needed to be removed from the Gallery. Statoil has been very understanding of this, despite the fact that it could affect visitor satisfaction of their title sponsorship. Statoil may display less patience for this in future if the relationship is less positive;
- The SMG often needs to ask Statoil to approve marketing material quickly (giving them less than the contractual 5 days to approve use of their trademark) –this is crucial to its ability to deliver things within tight schedules, and they always oblige. This 'fast track turn around' could be compromised if damage to the relationship results in a 'work to rule' approach;
- The SMG acknowledges at the time of negotiating the sponsorship agreement, Statoil would have (or ought reasonably to have) known about the campaigns against oil company sponsorship of cultural institutions. However, in terms of Statoil's expectations of confidentiality in relation to the amounts of sponsorship paid, in light of the Information Tribunal's rulings in the Tate cases, it would have (justifiably) assumed a higher level of confidentiality in relation to current, live, sponsorship figures. The SMG believes Statoil would therefore have a heightened sense of grievance against the SMG if the withheld information were to be disclosed.
- Given the high profile nature of the campaign activity around oil companies' sponsorship of cultural institutions, any break-down in the SMG's relationship with its current sponsors within this sector would be

likely to severely damage the SMG's ability to seek sponsorship from other companies in that sector in future.

- Furthermore, as the SMG's mission is focused on science, technology, engineering and mathematics, this would be very damaging to its future fundraising prospects and therefore to its own commercial interests. Whilst other cultural organisations might be relatively neutral as between the industries from which sponsorship originates, The SMG uses sponsorship as a way of building relationships with partners in industries which are central to its mission.
 - The SMG's Director has put this point as follows, in the context of the SMG's sponsorship by Shell: "when it comes to the major challenges facing our society, from climate change to inspiring the next generation of engineers, we need to be engaging with all the key players including governments, industry and the public, not hiding away in a comfortable ivory tower". So as well as the (obvious) financial consequences of a breakdown in relations with its sponsors, the SMG is concerned about the damage disclosure of the withheld information would do to its ability to engage with key industry players.
19. The SMG has highlighted to the Commissioner further and more specific reasons why disclosure would be likely to prejudice its commercial interests. These are set out in a Confidential Annex to this Notice.

Likely prejudice to Statoil's commercial interests

20. The SMG has also relied on prejudice disclosure would be likely to cause to any person or company. According to the SMG, disclosure of the withheld information would be likely to prejudice the commercial interests of both Sponsors.
21. There is a competitive market for sponsorship amongst companies seeking entities to sponsor. Companies compete to both become sponsors and to obtain maximum value from their sponsorship arrangements and return on investment. Disclosure of the withheld information would be likely to be prejudicial to the Sponsors' commercial interests as it would prejudice their negotiating position in future sponsorships. Specific factors considered include:
- Statoil is also an active sponsor of other organisations. Disclosure of the withheld Information would prejudice its' position in relation to live and future sponsorships, and could damage relationships with third party recipients of sponsorship.

- The expectations of commercial confidentiality both Sponsors would have had in relation to the sponsorship figures, especially given the timing of the request (as explored in paragraphs 26-29 below).
22. In line with its duties under the section 45 of FOIA Code of Practice, and as set out in the decision of the Information Tribunal in the case of *Derry City Council v The Information Commissioner*¹ the SMG has consulted with Statoil about the ways in which disclosure may prejudice its commercial interests.
23. Whilst the SMG has clearly maintained that the decision about the application of the exemption is for the SMG as the public authority to take, it has also considered Statoil's views. As a result, it is the SMG's view that disclosure of the sponsorship amounts would be likely to damage Statoil's commercial interests by revealing to its competitors (and the public) sensitive information about its sponsorship of the SMG, undermining their ability to compete on a level playing field and potentially damaging their relationships with its employees and disrupting operations.
24. The SMG has highlighted to the Commissioner further and more specific reasons why disclosure would be likely to prejudice the commercial interests of Statoil. These are set out in the Confidential Annex to this Notice.

The Commissioner's position

25. In order for a prejudice based exemption such as section 43(2) to be engaged the Commissioner considers that three criteria must be met:
- Firstly, the actual harm which the public authority alleges would – or would be likely – to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resulting prejudice which is alleged must be real, actual or of substance; and

¹ EA/2006/0014

- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority to discharge. In this case, the SMG has relied on the 'would be likely' level of prejudice and the Commissioner has considered whether the threshold has been reached in this case.
26. The Commissioner notes in this case that the withheld information relates to a sponsorship arrangement which had just been put in place four months prior to the complainant's request and only one of the payments under that arrangement had fallen due.
 27. The Commissioner accepts that the withheld information was and still is very much live and current and therefore distinct from the historical sponsorship amounts previously disclosed by other cultural institutions in recent years.
 28. The Commissioner considers each arrangement is unique and individually negotiated, however a lot of what sponsors gain from the monetary amounts given is on show at the various exhibitions and events that they sponsor. Disclosure of the amounts agreed in the same market conditions (with the request being so close to when the arrangement was finally agreed) would be useful to other sponsors wishing to enter into similar arrangements or to the other cultural institutions which receive sponsorship that are in competition, just like the SMG, for corporate sponsorship. Disclosure would be likely to prejudice the SMG's ability to secure other deals and compete fairly against other organisations in the current market conditions. This would hinder its ability to secure the best terms and valuable funds upon which it heavily relies.
 29. The Commissioner also accepts that, due to the closeness of the request to the signing of the sponsorship arrangements to which the request relates, disclosure would be likely to prejudice the SMG's relationship with Statoil. The Commissioner is aware that cultural institutions have released information into the public domain in recent years about historic arrangements and sponsorship amounts and accepts that such information, after the passage of time, may no longer be commercially sensitive. However, the withheld information in this case is the amounts only just recently agreed at the time of the request. It is very much current and live information, specifically

negotiated within the same market conditions (or at least very similar) as those in existence at the time of the request. The Commissioner is aware that Statoil itself objected to disclosure at that time.

30. The Commissioner also agrees that disclosure of the withheld information would be likely to prejudice the commercial interests of Statoil. Sponsors too must negotiate with each cultural institution and any other organisation they sponsor to secure the best possible terms for the amount agreed. Each arrangement with the cultural institutions will be different and secured on different terms. Disclosure of the amounts given to the SMG would enable the other cultural institutions to scrutinise and compare arrangements. This could lead to some questioning the terms they have secured and ultimately prejudicing the long running support of Statoil in this area.
31. For the above reasons, the Commissioner is satisfied that section 43(2) of the FOIA is engaged. As section 43(2) is a qualified exemption, she now needs to go on to consider the public interest test.

Public interest arguments in favour of disclosure

32. The SMG has informed the Commissioner that, given the importance of this matter, it has considered the public interest test with considerable care. It has given weight to the public interest arguments in favour of disclosure, including those identified by the complainant, such as the public debate surrounding oil company sponsorship of cultural institutions, the need to ensure SMG obtains value for money from sponsors (in relation to the benefits granted), and the public interest in understanding how SMG raises funds. It has also considered the way in which disclosure would further the general public interest in accountability and transparency.
33. The complainant has informed the Commissioner that Statoil is continuing to extract fossil fuels, in contravention of the UN Paris Climate Agreement, which came into force on 4 November 2016. He states that the Agreement coming into force has significantly shifted the public interest in favour of disclosure, the reason being that Statoil's perceived 'shared focus' on science with the SMG is not borne out in Statoil's recognition of the scientific consensus on climate change in its planned continuing fossil fuel extraction activity. The complainant considers that the SMG did not make a full and detailed scrutiny of Statoil's activity prior to accepting its sponsorship. He considers that the SMG needs to counteract this lack of commitment to transparency and accountability to the public by increasing its transparency and accountability via disclosure of the sponsorship figure.

34. It is the SMG's belief that any public interest in disclosure can be met in alternative ways which do not damage the relevant commercial interests. For example, high level information about sponsorship is included in the SMG's published accounts. In addition, inherent to the concept of sponsorship, the fact of Statoil's support for Wonderlab will obviously be in the public domain, from which the public can debate the merits (or otherwise) of the sponsorship. Campaign activity around the Gallery to date demonstrates that the SMG and its sponsors already form part of the public debate surrounding oil company sponsorship of cultural organisations –the SMG considers that disclosure of the withheld information would add little of substance to this debate.

Public interest arguments in favour of maintaining the exemption

35. The SMG considers that it is not in the public interest for the SMG's ability to raise funds by way of corporate sponsorship to be undermined or jeopardised, nor for its bargaining position to be weakened. The SMG uses that sponsorship income to fund the costs of delivering world-class exhibitions and galleries, at a time when Grant in Aid is declining. If the SMG fails to be able to secure corporate sponsorship and the on-going financial sustainability of the SMG is damaged, the quality and scale of what it will be able to achieve in its exhibitions and galleries would decline, which is not in the public interest.
36. The SMG has informed the Commissioner that the sponsorship received for Wonderlab has made a very real difference to what it has been able to offer to its visitors in terms of the number and quality of its exhibits, the testing of the gallery (which ensures delivery of a world class attraction) and the staffing on gallery for interpretation and interaction with visitors.
37. The SMG also considers that it is not in the public interest for sponsors' commercial interests to be damaged. The SMG believes that corporate sponsorship of cultural institutions is substantially in the public interest and that the competition between sponsors and cultural organisations works in the public interest. The SMG believes that there is a strong public interest in private companies being able to sponsor cultural organisations and to expect the commercially sensitive information surrounding those arrangements to remain private, especially whilst the arrangements are live.

Balance of public interest arguments

38. The Commissioner has considered all of the public interest arguments, both in the body of this Notice and in the Confidential Annex, both in

favour of maintaining the exemption and of disclosure of the withheld information.

39. The Commissioner has accorded significant weight to the general principles of transparency and accountability on the part of public authorities. She has considered the submissions of both the SMG and the complainant in relation to these principles.
40. The Commissioner accepts that the SMG has been open about the basis upon which it actively seeks partnerships with industry and the link between generating support from industry and its mission (see quote from its Director in paragraph 19 above). There is no sense in which the SMG has misrepresented its position or acted hypocritically.
41. The SMG has informed the Commissioner that, as well as the SMG's transparency in relation to sponsorship by oil companies, Statoil itself has been open about the reasons it chose to support the SMG and the Gallery-amongst its objectives of the sponsorship are "to strengthen the mastering of Science, Technology, Engineering and Mathematics (STEM) subjects, secure long-term recruitment and position Statoil as a supporter of talent development in STEM among our target groups." More generally, the SMG states that Statoil has added value to its 'Lates' programme through provision of actual events – for example Statoil created a 'make your own wind turbine' interactive event during January 2017. These types of benefits derive from the SMG's broader relationships with sponsors such as Statoil.
42. In relation to the complainant's argument about the Paris Climate Agreement and Statoil's activities, the Commissioner notes that the Agreement had not come into effect at the time of the agreement of the sponsorship, nor at the time of the request, although it is important to note that it was under discussion at that time and several countries had signed it. Therefore, it should have formed part of the public interest considerations at the time of the request and response, as the principles and science behind the agreement had been very much agreed upon at that time. The Commissioner has given significant consideration to the complainant's argument that public debate would be informed by disclosure of the sponsorship amount from Statoil, a company which is apparently continuing to act in contravention of the principles of the Paris Climate Agreement.
43. Another of the complainant's public interest arguments in favour of disclosure was that the public should be able to ascertain whether the SMG is getting value for money by being able to compare the amounts of private sponsorship and public funding streams. The Commissioner accords some weight to this argument, however she is mindful of the

SMG's increasing reliance on private and corporate sponsorship and how disclosure of the withheld information would ultimately be likely to jeopardise such sponsorship in the future, which would not be in the public interest.

44. In his internal review request, the complainant raised the issue of the positive impact on Statoil's public image by being associated with SMG. The Commissioner is aware that brand association and the consequential public perception is inherent to any sponsorship arrangement – it is the fundamental value proposition for any sponsor. In a statement regarding the sponsorship received from Statoil, the SMG's Director has responded to this point as follows:

"Campaigners use colourful language to describe a relationship through which we gain vital funds and our partners benefit through association with our brand. Yet enlightened self-interest is central to the idea of sponsorship. At the Science Museum Group, we actively seek out businesses whose long-term interests are served by our mission to inspire the next generation of scientists and engineers".

45. The complainant has argued the following: -

"That Statoil is currently engaged in pursuing the extraction of new sources of fossil fuels. These business plans are in direct opposition to the recently signed Paris Climate Agreement and the global temperature rise limit agreed there. It is therefore legitimately within the public interest to assess the measures by which social legitimacy is conferred upon Statoil through cultural sponsorship, despite the company's disregard for the scientific consensus on climate change in pursuit of its business plans."

46. The Commissioner wishes to address the points made in the above statement. Firstly, the Commissioner recognizes that the purpose of the complainant's request is not to argue whether the activity of sponsorship itself is wrong, but to try and gain greater clarity around the purpose and motivations for that sponsorship. Both the Commissioner and the SMG recognise that a debate on the issue of oil sponsorship exists and that there is legitimately a public interest in it.

Disclosure of the sponsorship amount would enhance that debate and allow it to take place in a better-informed and less speculative way.

47. However, the Commissioner recognises the fact that the presence of debate on a particular issue does not render that activity as wrong or inappropriate. Statoil legally operates within the UK and the SMG is within its rights to agree sponsorship arrangements with it.

48. The complainant argues that, even though Statoil may 'legally operate' within the UK, given the growing impacts of climate change, concerns around the fossil fuel industry and the debate around oil sponsorship, it was incumbent upon the SMG to demonstrate that it had exercised due diligence in understanding Statoil's values and the claims made against the company. The complainant claims that the SMG has not done this and as such, the SMG has failed to demonstrate its commitment to transparency, its own Code of Ethics and the public's trust, therefore there is a public interest in being transparent about the sponsorship amount.
49. The Commissioner acknowledges that sponsorship of cultural institutions by the oil industry is a matter of significant public interest and debate and that the value of this sponsorship arrangement would legitimately be within the public interest in this respect. As set out above, the Commissioner has taken this into account in her balancing of the public interest factors in favour of disclosure and of maintaining the exemption. However, she considers that the public interest in the SMG maintaining its relationships with private and corporate sponsors and not jeopardising future chances of such sponsorships, which are becoming increasingly important in future scientific advances and developments, is greater than the public interest in further informing public debate about sponsorship of cultural institutions by oil companies, specifically Statoil in this case.
50. Therefore, the Commissioner has concluded that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in favour of disclosing the withheld information.

Right of appeal

51. 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

52. 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.
53. 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

Deirdre Collins
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