

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 April 2018

Public Authority: Arts Council England
Address: The Hive
49 Lever Street
Manchester
M1 1FN

Decision (including any steps ordered)

1. The complainant has requested information relating to the purchase of the 'Mountbatten Papers'¹.
2. The Commissioner's decision is that the Arts Council has correctly applied section 44(1)(a) to the withheld information.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 14 June 2016, the complainant wrote to the Arts Council and requested information in the following terms:

"I am making a FOI request for all details and correspondence concerning the 2011 purchase by Southampton University of the Mountbatten papers including the terms of the Ministerial Direction made on 5th August 2011. I would like to know the sums paid for the papers, where those sums came from, the conditions for access, reasons

¹ <https://www.southampton.ac.uk/archives/cataloguedatabases/mb/index.page>

for any restrictions and under which provision of the 1980 Act the 'ministerial direction' was made."

5. The Arts Council responded on 11 July 2017. It refused to provide all of the requested information and cited sections 21, 40(2), 41 and 44 of the FOIA as its basis for doing so.
6. In his request for internal review, the complainant disputed the application of section 41. The Arts Council reviewed its application of sections 41 (information provided in confidence) and 44 (prohibitions on disclosure), however, in its response of 7 August 2017 it maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 6 September 2017 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of her investigation to be to determine if the Arts Council has correctly applied either section 44 or 41 to the withheld information.

Background

Acceptance in Lieu (AIL)

9. The Arts Council explained that the details of the AIL scheme are set out in section 230 of the Inheritance Tax Act 1984. This provides that the Commissioners of HMRC, if they think fit, and the Secretary of State agrees, on the application of any person liable to pay tax, accept in satisfaction of the whole or any part of it any picture, print, book, manuscript, work of art, scientific object or other thing which the Secretary of State is satisfied is pre-eminent for its national, scientific, historic or artistic interest.
10. AIL therefore enables taxpayers who are liable for the payment of an existing inheritance tax bill to offer and (if accepted by HMRC) transfer works of art and important heritage objects into public ownership. Offers in lieu are made to HMRC and must be approved by the Secretary of State for Culture, Media and Sport (or the appropriate Minister in the devolved governments of Scotland and Wales). The Secretary of State is advised by Arts Council England's AIL Panel (pursuant to an authorisation made under article 3 of the Contracting Out (Functions in relation to Cultural Objects) Order 2005 and the Agreement for the

provision of services in relation to cultural objects, see attached), which consists of independent experts who seek specialist advice on the object offered. Their time is freely volunteered and they are only entitled to reclaim expenses for attending meeting or viewings. Guided by that advice, the AIL Panel recommends whether or not the object in question is pre-eminent and assesses its open market value.

11. The AIL Panel's recommendations are made to the Secretary of State, who decides whether or not an object should be accepted. If the object is accepted, the terms and any conditions are recorded in a Ministerial Direction pursuant to section 9 of the National Heritage Act 1980.
12. Where an offer in lieu is made, the taxpayer is advised by HMRC that should the offer be successful, some information will be put into the public domain. The relevant department will publicise the acquisition and the tax settled via a press release, but will not identify the offeror or any other confidential information. Other than items that have been accepted and the amount of tax that is satisfied by the offer, the individual taxpayer has a right to confidentiality in relation to their tax affairs.
13. The Arts Council consider it is acting on behalf of HMRC for the purpose of the AIL functions, and because the information Arts Council holds relates to an identifiable person who has not consented to release of the information, the exception under section 23 does not apply.

Reasons for decision

14. Section 44 of the FOIA states 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.

This is commonly known as a statutory bar to disclosure.
15. It is an absolute exemption, which means that if information is covered by any of the subsections in section 44 it is exempt from disclosure. It is not subject to a public interest test.
16. The Arts Council has applied section 44(1)(a) and stated that it was relying on section 182 of the Finance Act 1989 ("FA") as to disclose taxpayer's information to a third party without lawful authority or without the consent of the taxpayer would be an offence.

17. *Section 182(1) states that:*

(1) A person who discloses any information which he holds or has held in the exercise of tax functions, [...] is guilty of an offence if it is information about any matter relevant, for the purposes of any of those functions—

(a) to tax or duty in the case of any identifiable person,

(b) to contributions payable by or in respect of any identifiable person,

["Tax functions" means functions relating to tax or duty of the Commissioners, the Board and their officers, and of any other person providing, or employed in the provision of, services to the Commissioners, the Board and their officers (s.182(2)).]

["The Board" means the Commissioners of Inland Revenue (s.182(10)).]

["Identifiable person" means a person whose identity is specified in the disclosure or can be deduced from it (s.182(10A)).]

18. The Arts Council consider that (in providing services to HMRC in relation to the Acceptance in Lieu (AIL) tax functions) it holds tax information in respect of an identifiable person and it would be an offence to disclose this information.
19. As explained above, the AIL Panel's recommendations are made to the Secretary of State, who decides whether or not an object should be accepted. If the object is accepted, the terms and any conditions are recorded in a Ministerial Direction pursuant to section 9 of the National Heritage Act 1980.
20. The information considered by the AIL Panel therefore relates to an individual's tax circumstances.
21. The Arts Council stated it had considered the gateway to disclosure in section 182(5) and did not consider this applied because the Arts Council does not have lawful authority to disclose the information, it does not have the consent of the person whose case the information is about and the information has not already been lawfully made available to the public.
22. In addition to section 182 FA, section 18 of the Commissioners for Revenue & Customs Act 2005 ("CRCA") contains a statutory bar related to the functions of HMRC (which includes anyone acting on behalf of HMRC).

23. The CRCA confers wide ranging functions on HMRC relating to the collection and management of taxes and section 18(1) creates a prohibition on disclosure of information connected to these functions. There are some circumstances, set out in sections 18(2) and 18(3), in which this prohibition does not apply, but these are not relevant to FOIA. However, the scope of the prohibition, in relation to FOIA disclosures, is limited by section 23. This says that the prohibition on disclosing information in section 18(1) only applies to FOIA disclosures if the information relates to an identifiable person.
24. The Arts Council consider it is acting on behalf of HMRC for the purpose of the AIL functions, and because the information Arts Council holds relates to an identifiable person who has not consented to release of the information, the exception under section 23 does not apply. Accordingly, the Arts Council maintain that disclosure is exempted under section 44 FOIA.
25. The Commissioner is satisfied that the requested information would be held by the Arts Council in connection with providing services to HMRC in relation to the AIL tax functions.
26. Following the binding decision of the Upper Tribunal in 2011 (Ofcom v Gerry Morrissey and the IC, 2011 UKUT 116 AAC), the Commissioner will not question or examine the reasonableness of the authority's decision. If the authority has decided that information should not be disclosed under a gateway, the Commissioner will only verify that the authority has made that decision, and not consider whether its decision was reasonable.
27. Therefore, the Commissioner accepts that there was no obligation on the Arts Council to disclose the specified information.
28. In conclusion, the Commissioner's decision is that the Arts Council has correctly applied section 44(1)(a) to withhold all the requested information in this case.

Right of appeal

29. 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

30. 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.
31. 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

Pamela Clements
Group Manager
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