

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 May 2022

Public Authority: The Royal Mint
Address: Llantrisant
Pontyclun
CF72 8YT

Decision (including any steps ordered)

1. The complainant has requested information relating to a specific coin.
2. The Royal Mint withheld the requested information, citing section 43(2) of FOIA.
3. The Commissioner's decision is that the withheld information engages section 43(2) and the public interest lies in maintaining the exemption.
4. The Commissioner does not require the public authority to take any further steps.

Request and response

5. On 24 February 2021 the complainant made the following request for information:

"1. Please could you let me know the number of allocations made for the release of the 3 Graces 2oz gold coin (mintage 325 product UK20WW2G) internally by the mint that was not to the public via the website at launch; and to the type of customer they were allocated (Dealers; Royal Mint employees; Mint Marque customers of certain standing).

2. Please could you let me know if the Royal Mint sold this coin to any customer at source for a greater price than the website launch price of £4,995 and if so what that price was in each case."

6. The Royal Mint responded on 11 March 2021. In relation to part 1 of the request, it confirmed that this information was exempt from disclosure in line with section 43(2). In relation to part 2 of the request, it confirmed that it 'has not sold this coin to any customer at source for a greater price than the website launch price of £4,995.'
7. On 12 April 2021 the Royal Mint provided its internal review response. It upheld its previous position and confirmed, in relation to part 1 of the request, that 'no allocation of the Three Graces coin was made to Royal Mint employees.'

Scope of the case

8. The complainant contacted the Commissioner on 10 June 2021 to complain about the way that their request for information had been handled.
9. The Commissioner considers the scope of his investigation to be to determine if the withheld information engages section 43(2) and, if so, whether the public interest lies in maintaining the exemption or in disclosure.

Reasons for decision

Section 43(2) – commercial interests

10. Section 43(2) of FOIA states:

'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).'

11. The Commissioner's guidance 'Section 43 - Commercial interests'¹ states 'A commercial interest relates to a legal person's ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent.'
12. In order for a prejudice based exemption such as section 43(2) to be engaged there must be likelihood that disclosure would, or would be likely to, cause prejudice to the interest that the exemption protects. In

¹ [Section 43 - Commercial interests | ICO](#)

the Commissioner's view, three criteria must be met in order to engage a prejudice based exemption:

- 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 resultant prejudice which is alleged must be real, actual or of substance; and,
 - 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.
13. Consideration of the exemption at section 43(2) is a two-stage process: even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

The applicable interests

14. The Royal Mint has highlighted the harm that it envisages disclosure would cause:

"- it may (and in our view, will) be of significant commercial advantage to The Royal Mint's competitors;

- the integrity and strength of the relationships we have with our customers and distributors will be called into question (for example, as a result of their concerns that too little allocation was made available to them compared to the other channel(s));

- to competitors at the time of or ahead of coin launches, it would be likely to distort prices in the market, and;

- the Royal Mint may lose many existing and new customers, if consumers become aware that much of its produced stock is distributed by third party resellers (which, of course, is vital to ensure a healthily competitive market)."

15. The Commissioner is satisfied that the arguments presented by the Royal Mint outline how disclosure would prejudice the applicable interests within the relevant exemption.

The nature of the prejudice

16. The Commissioner must now consider if there is a causal link between the information that is being withheld and the prejudice that section 43(2) is designed to protect.
17. The Royal Mint is the exclusive manufacturer of UK commemorative coins and sells its products through its website. The Royal Mint has explained that 'To ensure fair competition in respect of sales of UK commemorative coins, it is necessary for The Royal Mint to make a certain amount of our products available to third party resellers.'
18. The Royal Mint has explained that if it did not make its product available through resellers, 'the argument would (rightly) be that we are in a monopolistic position – and, with no competition in place, this could be construed as being of detriment to the end consumer.'
19. The Royal Mint has also explained that it proactively publishes the mintage for each commemorative coin that it produces. This allows customers to gauge how limited or popular a particular coin will be and their chances of obtaining one. As a producer and purveyor of collectables, the Royal Mint's business model operates in, and relies upon, a highly competitive environment both nationally and internationally.²
20. Whilst the mintage of a particular coin is published, the allocation between the Royal Mint's direct-to-consumer offering (online sales) and its business-to-business offering (resellers of Royal Mint product) is not disclosed. The Royal Mint has explained that this is for several reasons.
21. Firstly, 'The Royal Mint may find it difficult to negotiate with its customers and distributors, if they feel as though a product's pool allocation is not decided justly in their favour.'
22. The Commissioner agrees to a certain extent. The withheld information indicates the product allocation for each channel but it does not breakdown the allocation given to each reseller. Therefore, an individual reseller can work out if more of the product was allocated to the Royal Mint itself or resellers. However, an individual reseller cannot work out if it has received more or fewer of the product than another reseller.
23. Since the withheld information does not breakdown individual reseller's allocation, the Commissioner does not consider it very likely that disclosure would make it difficult to negotiate with resellers. However,

² [Official Distributors | The Royal Mint](#)

the Royal Mint is also concerned that disclosure will affect its negotiation position with its customers.

24. At the time of raising their complaint with the Commissioner, the complainant highlighted that they are a member of the Mint Marque programme³ which offers certain customers benefits and rewards. The Commissioner agrees that, if the requested information was disclosed it might lead to dissatisfaction from customers, including Mint Marque members. In turn, this may dissuade individuals from becoming Mint Marque members which, the Commissioner understands, is a paid membership.
25. To reiterate, the Royal Mint is the exclusive producer of UK commemorative coins. However, this does not mean that it is without competition both nationally and internationally. The Royal Mint is concerned that, the methodology by which it markets and allocates its products 'is subject to a range of factors, which are inherently commercial in nature. The release of this information into the public domain would, in our view, be of interest to The Royal Mint's competitors and therefore would be likely to be prejudicial to its commercial interests.'
26. Some resellers, such as the Westminster Collection⁴, also offer alternative, non-legal tender commemorative coins, medals and gifting products. The coin that is the subject of this notice had a mintage of 325 and originally went on sale for £4995. If a competitor knew how the Royal Mint had shared the allocation for this coin, it could anticipate how coins of similar value/mintage would be allocated in the future and tailor its own offer accordingly.
27. The Royal Mint has explained that it is a quasi-public, government-owned body and HM Treasury is its sole shareholder. However it is also a private limited company and, like all commercial enterprises, its aim is to generate profit. The Royal Mint is concerned that, to do so, it must stay a step ahead of its competitors.

The likelihood of prejudice occurring

28. It is important to identify which threshold of prejudice is being relied upon when applying a qualified exemption such as section 43. The higher threshold, disclosure 'would' prejudice, will hold more weight

³ [Mint Marque | The Royal Mint](#)

⁴ [The Westminster Collection](#)

when considering where the public interest lies than the lower threshold, disclosure 'would be likely' to prejudice.

29. The Royal Mint has explained 'there is a real and significant risk of such prejudice occurring – and certainly one which is more than hypothetical/remote.'
30. The Royal Mint has confirmed it is relying on the lower threshold of prejudice in this instance; disclosure would be likely to harm its commercial interests.

Is the exemption engaged?

31. In this instance the Commissioner is satisfied that the three part test referred to in paragraph 12 has been met, the Royal Mint has been able to demonstrate a causal relationship between the disclosure of the requested information and prejudice to its own commercial interests. The Commissioner is also satisfied that there is a real and significant risk of the prejudice occurring, even though the chance of the prejudice occurring is less than 50%.
32. The Commissioner will now go on to consider the balance of the public interest test. The information must be disclosed unless the public in maintaining the exemption outweighs that of disclosure.

Public interest test

Public interest arguments in favour of disclosure

33. The Royal Mint does not seem to have identified any public interest arguments in favour of disclosure.
34. The Commissioner notes that there is always a public interest in public authority's demonstrating transparency and accountability, the principles that under FOIA.

Public interest arguments in favour of maintaining the exemption

35. The Royal Mint has explained that 'As the Royal Mint is a wholly government-owned organisation, any commercial damage to it would, in turn, be mirrored for its sole beneficial owner, HM Treasury – a ministry financed by the taxpayer.'
36. The Royal Mint has explained 'transparency and accountability is not the main factor at play here, but rather the need to maintain The Royal Mint's income in the highly pressurised financial circumstances that currently face it and HM Treasury.'
37. The Royal Mint has also explained that, when it comes to transparency, it always publishes the mintage of its coins. As previously discussed, this

allows customers to gauge how limited or popular a particular coin will be and their chances of obtaining one. The Royal Mint has also cited its annual report which it says goes a long way in satisfying the public interest in its products and services. Ultimately, the Royal Mint believes it is as transparent as possible without giving away any information that would be likely to prejudice its own commercial interests.

The balance of the public interest

38. The Commissioner believes that the public interest lies in maintaining the exemption in this instance.
39. The Royal Mint has explained 'the substance of this case is in no way pressing or vital information in need of disclosure...For example, it is not a debate concerning public expenditure or value for money – rather, it stems from a disappointed customer's complaint, in relation to the sales allocation share of one popular coin product, and their missing out of purchasing it.'
40. The Commissioner notes that FOIA is purpose blind and information, whether trivial or significant, must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure. If the complainant is disappointed that they did not have the chance to purchase a specific coin then this is a valid concern for them to have. However, when the information that is being requested is of a purely private interest, it is harder to justify disclosure when balanced against any prejudice that it may cause.
41. The complainant has accused the Royal Mint of deliberately building up interest in the coin in question, producing a very limited mintage and then allocated the product away from the Mint Marque programme. The complainant notes the Mint Marque programme is for the Royal Mint's 'very best customers.' The complainant ultimately believes that disclosure is in the public interest.
42. The complainant has also accused the Royal Mint of providing the product to a reseller in which the Royal Mint is invested⁵ and profiting from this arrangement.
43. The Royal Mint may be wholly government-owned organisation but it is ultimately a commercial enterprise. The complainant is right, the Royal Mint creates demand for its rarer products and this is part of its business model. The very nature of collecting, and the appeal of the Royal Mint's

⁵ [invests in Sovereign Rarities | The Royal Mint](#)

products, is that coins can be bought, sold, traded and collected. The complainant's eagerness to obtain a particular coin, which the Commissioner notes is now being resold for six times its original price, does not outweigh the need to protect the Royal Mint's, and by extension HM Treasury's, commercial interests.

Right of appeal

44. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

45. 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.
46. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF