

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 March 2023

**Public Authority:** Science Museum Group  
**Address:** Science Museum  
Exhibition Road  
London  
SW7 2DD

### Decision (including any steps ordered)

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1. The complainant has requested any details and correspondence held between the Science Museum Group (SMG) and the Cabinet Office relating to the Adani Group or its subsidiaries over a certain timeframe. The same information was also requested between the SMG and the Department for Digital, Culture, Media & Sport (DCMS). The SMG provided the information it held in a redacted form, withholding some of the information under sections 36, 43(2), 40(2), and section 21 of FOIA.
2. The Commissioner's decision is that SMG has appropriately cited section 36(2)(c) of FOIA and that the public interest favours non-disclosure. SMG also cited section 43(2) of FOIA correctly and the public interest lies in maintaining the exemption. The Commissioner has also concluded, on the balance of probability, that no further information falling within scope is held by the SMG.
3. The Commissioner does not require the public authority to take any steps.

### Request and response

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4. On 14 June 2022, the complainant wrote to the SMG and requested information in the following terms:

“Please confirm if you hold any of the following information and, if so, disclose copies of relevant materials.

1. Details and copies of correspondence that has taken place by the Science Museum Group (SMG) with the Cabinet Office, which relates to or discusses the Adani Group (or its subsidiaries).

2. Details and copies of correspondence that has taken place by the Science Museum Group (SMG) with the Department for Digital, Culture, Media & Sport (DCMS) which relates to or discusses the Adani Group (or its subsidiaries).

For both (1) and (2), searches can be limited to the period July 2020-December 2021 and to those members of staff in senior management positions and/or who would logically hold relationships with the specified government departments on behalf of the SMG”

5. The SMG responded on 13 July 2022 and provided some information. It redacted some of this information, withholding it under section 36 (prejudice to the effective conduct of public affairs), section 43(2) (commercial interests), section 40(2)(personal information) and section 21 (future publication) of FOIA.
6. On 26 August 2022 the complainant asked for an internal review, questioning whether the SMG has conducted a thorough public interest test. They also queried whether they had been provided with all the information that SMG held (presumably allowing for the redaction).
7. Following an internal review, SMG wrote to the complainant on 23 September 2022. It stated that it was maintaining its position regarding the citing of section 36 and 43(2) of FOIA and it reiterated that it had searched for any information falling within scope.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 9 December 2022 to complain about the way their request for information had been handled.
9. The Commissioner considers the scope of this case to be SMG’s citing of section 36(2)(c) and section 43(2) of FOIA and whether SMG holds any further information as these formed the basis of the internal review request and the complaint to this Office.

## Reasons for decision

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### Section 1 – general right of access to information held by public authorities

10. Section 1(1) of the FOIA states that:

“Any person making a request for information to a public authority is entitled-

(a) To be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

11. In cases where there is a dispute over the amount of information held, the Commissioner applies the civil test of the balance of probabilities in making his determination. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held (and, if so, whether all of the information held has been provided). The Commissioner is not expected to prove categorically whether the information is held.

12. The complainant, in their request for internal review said the following:

“It appears that some emails come from longer chains of communication and I would ask that the SMG checks whether all material within the scope of the request has been identified and provided”.

13. SMG made an additional check at internal review and confirmed to the complainant that, “all emails were thoroughly checked and reviewed and that those relevant to the Request were provided, including all longer chains of communication”. This was confirmed in SMG’s response to the Commissioner.

### SMG’s view

14. The SMG searched several times for the requested information, using different search terms in order to make sure that any information falling within scope could be electronically collated. This was followed by a manual search of each item of correspondence to check it was within scope and in order to make any necessary redactions.

15. Any individuals that might have had further correspondence were asked to double-check their inboxes and any other records they might hold for

information falling within scope. The information located was all electronic, though executive assistants had been asked to check for any hard copies containing relevant information.

16. The SMG explained that any third parties "listed in the request deal directly with specific teams within" SMG. These teams were asked to check their documents and any correspondence. They were also asked to provide search terms for Information and Communications Technology (ICT) colleagues to use in order to carry out searches. This information was then reviewed for anything falling within scope:

"The search terms used were Sponsorship 'or' Partnership 'or' Adani 'and' for emails to SMG from the relevant government departments (DCMS, BEIS and Cabinet Office); and - Partnership 'or' Sponsorship 'or' Adani 'and/or' for emails from SMG to these departments (DCMS, BEIS and Cabinet Office)"

SMG explained that the search meant that any correspondence coming through from the named government departments would have been located if it included one of the search terms.

17. The SMG's executive team, their assistants and members of relevant teams were asked to check their emails and saved documents for any information falling within scope and provide it to the individual who was working on the request. SMG is confident that nothing relevant to the request was deleted. The electronic searches carried out by ICT were thorough and would have located any relevant information as it was within its retention period.
18. The SMG stated to the Commissioner that, as a public authority, it had an obligation to remain transparent and a statutory requirement to retain the requested information under the FOIA and the Public Records Act 1958. SMG has -

"...a retention policy in place where any important decision making, or museum business is saved and held as case file core/historically valuable content and retained permanently".

### **The Commissioner's view**

19. The Commissioner has no reason to dispute what the SMG has detailed, as set out above. His view is that sufficient searches have been carried out to accept that, on the balance of probability, no further information is held.

### **Section 36 – Prejudice to the effective conduct of public affairs**

20. Section 36 FOIA provides that,

“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act -

... (2)(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.”

21. SMG has applied section 36(2)(c) in relation to part of the withheld information that is being considered here.

22. Section 36 is a unique exemption within FOIA in that it relies on a particular individual, the Qualified Person (QP), within the public authority giving an opinion on the likelihood of prejudice occurring. The Commissioner is required to consider the QP’s opinion as well as the reasoning which informed that opinion. Therefore, in order to establish that the exemption has been applied correctly the Commissioner must:

- Establish that an opinion was given;
- Ascertain who was the qualified person or persons;
- Ascertain when the opinion was given; and
- Consider whether the opinion was reasonable.

23. The exemptions at section 36 can only be engaged on the basis of the reasonable opinion of a QP. The QP at the SMG at the time of the request was Ian Blatchford, Director & Chief Executive. The Commissioner is satisfied that they were the appropriate qualified person to give an opinion. The opinion of the QP was sought on 12 July 2022 and given on 13 July 2022. SMG explained that the QP had access to the correspondence binder, public interest test and a summary of the information. However, the QP was already familiar with the context.

### **Is the qualified person’s opinion reasonable?**

24. The QP identified and gave their opinion that they believed section 36(2)(c) of FOIA applied to the withheld information. This means that the QP’s opinion was that release would be likely otherwise to prejudice the effective conduct of public affairs.

25. The Commissioner's guidance<sup>1</sup> regarding the definition of "reasonable" is as follows:

"In this context an opinion either is or is not reasonable. In deciding whether an opinion is reasonable, the plain meaning of that word should be used, rather than defining it in terms derived from other areas of law. The most relevant definition of 'reasonable' in the Shorter Oxford English Dictionary is: "in accordance with reason; not irrational or absurd". Therefore, if it is an opinion that a reasonable person could hold – then it is reasonable.

This is not the same as saying that it is the only reasonable opinion that could be held on the subject. The qualified person's opinion does not become unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It does not even have to be the most reasonable opinion that could be held; it only has to be a reasonable opinion. It is only unreasonable if it is an opinion that no reasonable person in the qualified person's position could hold."

26. The Commissioner must consider whether it is reasonable to argue that disclosure would be likely to "otherwise prejudice" the conduct of public affairs. The Commissioner's guidance makes it clear that this limb, "is concerned with the effects of making the information public". The Information Tribunal<sup>2</sup>

"...took the view that section 36(2)(c) is intended to apply to cases not covered by another specific exemption. So, if section 36(2)(c) is used alongside another exemption, the prejudice envisaged must be different to that covered by the other exemption. Furthermore, the fact that section 36(2)(c) uses the phrase "otherwise prejudice" means that it relates to prejudice not covered by section 36(2)(a) or (b)".

27. The SMG explained that the QP was provided with arguments for and against the application of the exemption and then reached their view.
28. The SMG argues that section 36(2)(c) is concerned with the impact which release could have on a public authority's ability to deliver an

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<sup>1</sup> [Section 36 - Prejudice to the effective conduct of public affairs | ICO](#)

<sup>2</sup> [Evans v Information Commissioner and the Ministry of Defence \(EA/2006/0064, 26 October 2007\)](#)

effective public service. The request sought correspondence between the Cabinet Office and the SMG and DCMS and the SMG which, it contends, provides "considerable breadth in the public sector to the potential impact of the information". At the time SMG understood that there was a proposal that Boris Johnson (the then Prime Minister) travel to India and the SMG "explored the potential opportunity to time the announcement" of its sponsorship agreement with this visit. It wanted to do this to "gain the best advantage in order to ignite interest and excitement" in its new gallery. The Prime Minister's visit to India did not then take place.

29. To release the discussions with the DCMS (SMG's supervising authority) and "the Cabinet Office would be likely to prejudice SMG's processes surrounding planning for funding announcements and our galleries". The SMG argues that it needs to be able to discuss ideas freely and frankly with its governing bodies and that disclosure would be likely to be prejudicial. Its view is that announcing -

"a new funding arrangement or gallery is an opportunity for SMG to meet its wider objectives of informing the public about [its] activities in order to seek to inspire and educate future scientists. It is key for us to explore opportunities to maximise these benefits."

30. As the trip did not take place, the SMG's view is that the withheld information falls under section 36(2)(c) as it would prejudice their processes and, more widely, the processes of the DCMS and Cabinet Office in planning the Prime Minister's trip. Had the trip taken place, SMG might have sought to apply an alternative exemption, if appropriate.
31. In the internal review SMG stated that the issue of sponsorship was still live, particularly "amongst some members of the public opposed to sponsorship from some sectors". The Commissioner is satisfied that this part of the QP's opinion is reasonable and that the section 36(2)(c) exemption is engaged at the lower level of prejudice. However, he must also consider whether it is in the public interest to disclose the withheld information.

### **Public interest factors in favour of disclosing the requested information**

32. The complainant contends that the SMG should act independently of central government because it is an "arms length government body" taking "decisions that are in its own interests, guided by its mission and the expertise of its staff". They state that at the same period that the SMG was negotiating a sponsorship agreement (ultimately with Adani Green Energy) the UK government was "seeking to strengthen its own



connections to the Adani Group". The complainant states that the public announcement of the sponsorship took place at the Global Investment Summit (GIS) held at London Science Museum in the week before the COP26 Climate Summit. They believe that this provided the Adani Group with a "valuable promotional platform" and is "deserving of further scrutiny". The complainant suggest that other disclosed documents have made clear

"that part of the motivations for, or 'selling points', of the sponsorship agreement with Adani was in order to assist it promoting its business to a wider audience and, as it claims, its involvement in the energy transition."

33. The complainant stresses the Adani Group's "involvement in coal mining and power on a significant scale" and that its role in "energy transition is ...not an established or accepted view to be promoted and endorsed". They suggest a correlation between the UK Government's interactions with the Adani group and the then Prime Minister's visit and the SMG's hosting of the GIS, raising questions about context and motivation. There may have been "an aligning of the government's agenda with that of the SMG". The request was made to try and establish whether there had "been more direct coordination".

34. The complainant argues that the scope of their request -

"relates to several fundamental issues concerning the SMG and its relationships with other regulatory/government bodies. The information requested could, I believe, shed light upon the extent to which the SMG has acted in accordance with its own Group Ethics Policy and the standards of best practice set out by sector-wide bodies".

35. The SMG recognises that there is a public interest in disclosing how decisions are made within SMG and in its communications with supervising authorities and other governing bodies.

### **Public interest factors in favour of maintaining the exemption**

36. It counters this view by pointing out that the trip did not take place and concludes that public interest is low. To disclose it would not further any debate there may be around these communications. In this instance "preserving the safe space for discussion amongst public bodies in seeking to gain best advantage from [its] announcements" outweighs the public interest in disclosure.

### **Balance of the public interest**



37. The actual amount of withheld information under section 36 is very limited – amounting to a few lines within an email, though the out-of-scope redactions (see 'Other matters') may have confused the issue. There are also areas of redaction where it may not be clear that the block of redaction is an individual's signature, job title and contact details. The majority of the information has, in fact, been disclosed to the complainant. The public interest is served by what has been disclosed and would not be furthered by the disclosure of the small amount of redacted information cited under this exemption.

### **Section 43(2) – Commercial interests**

38. Section 43(2) of the FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
39. The Commissioner has defined the meaning of the term "commercial interests" in his guidance on the application of section 43 as follows:
- "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."<sup>3</sup>
40. Most commercial activity relates to the purchase and sale of goods but it also extends to other fields such as services.
41. The Commissioner's guidance says that there are many circumstances in which a public authority might hold information with the potential to prejudice commercial interests.
42. The exemption is subject to the public interest test. This means that, even if the exemption is engaged, the Commissioner needs to assess whether it is in the public interest to release the information.
43. The public authority needs to demonstrate a clear link between disclosure and the commercial interests of the party. There must also be a significant risk of the prejudice to commercial interests occurring and the prejudice must be real and of significance for it to be successfully engaged.

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<sup>3</sup> [Section 43 - Commercial interests | ICO](#)

44. Firstly, the actual harm that the public authority alleges would or would be likely to occur if the withheld information was disclosed has to relate to commercial interests.
45. The SMG cited this exemption because it believed that the release of the withheld information would be likely to prejudice the commercial interests of itself. It refers the Commissioner to a previous decision [FS50655166](#) which upheld the SMG's position and which it believes to be "similarly appropriate".
46. Firstly, the SMG points out that it "competes with other cultural institutions and charities to attract corporate sponsorship and donations from private philanthropists". It has a "compelling commercial interest in maximising the income generated from such partnerships" and "securing value for money from sponsorship arrangements". SMG argues that the market for corporate sponsorship is increasingly competitive and institutions are in competition with each other to "maximise sponsorship income". They do this by "offering enhanced benefits, distinctive 'offerings' and a more professional approach in terms of structures and personnel".
47. The disclosure of this information would reveal the amount of the sponsorship provided by Adani Green Energy to the SMG. The SMG explains that the relationship is "relatively new" and that disclosure would reveal a recent example of the sponsorship fee it negotiated for this kind of gallery. Arrangements like these are "contractually negotiated afresh with each sponsor". SMG contends that there is no "set 'price list'" for its exhibitions or the sponsorship of its activities. Disclosing this information to the world under the FOIA would reveal the level of funding that had been negotiated to provide the sponsor with the agreed benefits. Disclosing the information "would prejudice future negotiations with other funders" and "would be likely to place an artificial ceiling on the amount of sponsorship" it could obtain from a future corporate sponsor. Negotiations for other projects would be disadvantaged.
48. The SMG argues that disclosure would be likely to damage its relationship with the sponsor and be detrimental to the success of this sponsorship arrangement. It may affect the SMG's ability to negotiate future sponsorship because it would "disincentivise the sponsor from building a longer-term relationship with the museum". If there was a breakdown in this relationship, it would also be likely to affect the SMG's seeking of sponsorship from other energy companies in the future which may be "deterred from partnering" with it if they had concerns about commercially sensitive elements being disclosed. As the focus for the SMG is "science, technology, engineering and mathematics" disclosure would be very damaging to its own commercial interests.

49. The Commissioner agrees that the withheld information is commercial, as it relates to one of its sources of funding. The SMG has not made it clear whether it is relying on the higher or lower threshold of prejudice. He accepts, however, that disclosure of the withheld information is prejudicial at least at the lower level as regards the SMG, both in terms of its relationship with its sponsor and its ability to negotiate future sponsorships.

### **Public interest**

50. Although the exemption is engaged, the Commissioner has gone on to consider whether it is in the public interest to disclose the requested information.

### **Public interest factors in favour of disclosing the information**

51. The complainant disputes the SMG's argument that disclosing information relating to its sponsorship deal would deter other potential sponsors. They argue that "the reverse could be true as it would provide greater clarity around the format and expectations around such relationships". Additionally, this type of sponsorship is not the SMG's only income.
52. The complainant's view is that "the perception of its relative necessity has no bearing on" whether its decisions are ethical, in line with sector-wide codes of practice and consistent with its mission and "subjected to reasonable scrutiny". The complainant questions the "partisan view" of the Chair and Director of the SMG and argues that there is "a clear public interest in understanding what may have informed or influenced their views and motivated their decision" as there has been "an erosion of standards as well as the public's trust in such institutions". There is a public interest in greater transparency regarding the SMG's interactions with DCMS" as its regulator and whether DCMS has discharged its functions regarding the sponsorship agreement and ensured that "SMG has complied with the Charities Commission's standards in how the sponsorship was negotiated and agreed". It is in the public interest to know that there hasn't been a conflict of interests.
53. The SMG acknowledges that the energy industry's sponsorship of cultural institutions is a matter of public interest and that discussions about this relationship "may legitimately be of interest".

### **Public interest factors in favour of maintaining the exemption**

54. Conversely, it is not in the public interest for SMG's ability to raise funds to be jeopardised or undermined or its bargaining position weakened. It uses sponsorship income to fund its exhibitions and galleries for the benefit of the public. The SMG stresses that the public purse is under

pressure. Should it be unable to “secure corporate sponsorship” and its “financial sustainability...damaged” it will be unable to deliver exhibitions and galleries to the public which is not in the public interest.

55. The SMG states that it has been open regarding the basis on which it actively seeks partnerships with industry. It argues that it has not “misrepresented its position or acted hypocritically” and that the public interest can be met in ways that would not damage its commercial interests. The SMG provides the example of high level information from sponsorship being provided in its accounts, the level of support it has received from different sectors<sup>4</sup> over a longer period of time without disclosing and compromising individual sponsorship agreements. The fact of the sponsor’s support is also “in the public domain, from which the public can debate the merits (or otherwise) of the sponsorship”. It acknowledges that the SMG “already form part of the public debate surrounding energy company sponsorship of cultural organisations”. It argues that there is little of substance to add to the debate.
56. SMG did provide some further public interest arguments in favour of non-disclosure but these cannot be reproduced here for reasons of confidentiality.

### **Balance of the public interest**

57. The Commissioner acknowledges that the sponsorship of cultural institutions by the energy industry is controversial and a matter of public interest. However, SMG has withheld a very limited amount of information from the complainant whilst publishing on its website details about its sponsorships and the percentage of income it receives by sector. Were the SMG to be more specific, it would not add to the public interest and may damage its current and future sponsorships. Therefore, the balance of the public interest lies in non-disclosure.

### **Other matters**

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58. The Commissioner notes that it might have been helpful to the complainant if the SMG had made it clearer that the majority of redacted information had been redacted because it was out of scope of the request, rather than withheld information. Three paragraphs of information were redacted as out-of-scope and these three paragraphs
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<sup>4</sup> [Our supporters - Science Museum Group](#)

were repeated as part of the chain of emails. It would appear that two other out-of scope paragraphs were also redacted. Making this clearer to the complainant might have improved the chance of an informal resolution.

## Right of appeal

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59. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

60. 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.
61. 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 .....**

**Janine Gregory**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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