

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 December 2023

Public Authority: The National Portrait Gallery
Address: St Martin's Place
London WC2H 0HE

Decision (including any steps ordered)

1. The complainant has requested a digital scan or copy of the glass plate negative of Amelia Julie Sargant. The National Portrait Gallery ('the Gallery') advised it didn't hold a digital copy of the negative and that the negative in question was in storage. The Gallery subsequently confirmed to the Commissioner that it doesn't consider it holds the requested information under FOIA. But to the extent that the information is held, section 12 of FOIA would apply due to the costs involved in providing a digital scan.
2. The Commissioner's decision is that the Gallery doesn't hold the information under FOIA.
3. It's not necessary for the Gallery to take any corrective steps.

Request and response

4. The complainant made the following information request to the Gallery on 5 August 2023:

"Please could you provide me with a digital scan or copy of the whole-plate glass negative of Amelia Julia Sargant (née Gambardella) held by the Gallery (Reference NPG x80081). Please provide this in as high a resolution as is possible."

5. The Gallery relied on section 21 of FOIA to withhold the requested information. This exemption applies when the requested information is already reasonably accessible to the applicant. The Gallery said that the image could be made available to the complainant under its Image Production process. It included a link to the relevant webpage and advised that there's a charge associated with this process.
6. In their request for an internal review, the complainant argued that the Image Production charge hadn't been clearly indicated in the schedule of charges advertised in the Gallery's FOI publication scheme. They also argued that the minimum "£50.00 + VAT" charge meant that the information wasn't reasonably accessible to them.
7. The Gallery's final position was that the Gallery didn't currently hold a digital copy of the whole-plate glass negative of Amelia Julia Sargent and wasn't therefore able to share this with the complainant. The Gallery explained that the negative was currently in storage and wouldn't be accessible until various building works are completed. It would be scheduled for digitisation following the conclusion of these works.
8. The Gallery noted the oversight about its publication scheme and confirmed that it intended to add the Image Production cost to the relevant area of its website.
9. In their complaint to the Commissioner, the complainant referred to section 11(1) of FOIA. This concerns the means by which requested information is to be communicated. They consider that this supports their view that they're entitled to the information in the format they've requested – because they originally requested the information in that format.

Reasons for decision

10. In its submission to the Commissioner the Gallery has confirmed that it doesn't now consider the requested image to be 'recorded information' under FOIA. This reasoning will therefore cover that matter.
11. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled (a) to be told if the authority holds the information and (b) to have the information communicated to them if it's held and isn't exempt information.
12. The complainant has referred to section 11(1). Under section 11(2), an authority that's considering whether it's reasonably practicable to

provide information in the requested format may have regard to all the circumstances, including the cost of doing so.

13. And under section 12(1) a public authority such as the Gallery can refuse to comply with section 1(1) if the cost of complying would exceed the appropriate limit of £450 (18 hours work at £25 per hour).
14. The Gallery has explained that it has a collection of over 215,000 portraits, including an extensive collection of photographs and photographic negatives. It digitises its collection, including photographic negatives, to achieve its statutory objectives set out under the Museums and Galleries Act 1992.
15. The Gallery says it holds a glass plate negative of the image requested. "Glass plate negatives" are photographic negatives comprising of a glass sheet that has been painted with a gelatine emulsion, which is then exposed through the process of taking a photograph to create the negative. These can be processed to create a positive image: the photograph. The negative can be used multiple times to reproduce the same image. Glass was used for this process as it's transparent and allows for a sharper, more stable and detailed negative than some other alternatives. However, these are fragile and prone to breaking if not stored or handled correctly.
16. The Gallery confirmed that it doesn't hold a copy of the photograph that's being requested in any format. A positive of this negative hasn't been produced, and it doesn't hold a copy of this negative in any format except as a glass plate.
17. Discussing section 11(1) and 11(2), the Gallery has explained that in order to process a glass plate negative, it retrieves the negative from storage, dusts it and puts it on to the digital scanner. It's then digitally scanned, and the image is cropped. This process usually takes about an hour unless there are any other complications.
18. In this case, the record in the collections database for this negative advises that the negative has a crack across the face of the subject. Without having access to the negative the Gallery says it isn't currently able to confirm the extent of the additional conservation work required prior to scanning. However, this is likely to take one of two routes:
 - If the negative is cracked but complete, the Gallery would create a frame around the glass plate that's the same thickness as the plate, sandwich it between two other sheets of glass and then tape it around the edges.
 - If the emulsion is lifting, it would need to relay the emulsion and create a new glass enclosure.

19. Both processes would take about half a day. The Gallery says it currently has a consultant providing its photographic conservation, and a half day of work from this consultant would cost the Gallery approximately £400.
20. The negative is currently stored onsite in the Gallery's Negative Store. In late 2022, it started refurbishment works on this store, preventing routine access to its negatives collection. Currently this area of the building is still an active building site and requires significant cleaning, and this was also the case in August when the Gallery first received the request.
21. The photographic negatives are very fragile, and their surfaces are prone to damage. They're stored in boxes of approximately six and are wrapped in tissue paper to prevent accidental damage when being moved or extracted.
22. Due to the nature of the building works, there's currently a large amount of dust in this area. The shelves housing this collection are covered in sheeting to protect the boxes of negatives and prevent any dust from getting into or on these, as trapping any particulates in the boxes could irreparably damage the surface of the negatives. The Gallery has a duty to care for and preserve its collection under the Museums and Galleries Act. Its Head of Collections, Photograph Curators, and Conservators have all confirmed that lifting up and moving the sheeting to access the boxes will disturb the dust. They've also advised that moving dust around in the space in this way and extracting boxes or negatives from the collection could put these and other nearby items at risk.
23. Since building work began, this collection has been inaccessible to the public. The Gallery says the following published statement regarding the work on its Negatives Store can be found on its Archive and Library webpage:

"Temporary restricted access to negatives: We are currently carrying out essential maintenance on the Gallery's negative collection stores; these negatives form an important part of the photographs collection. As such there will be no access to a large proportion of these collections until January 2024, so the Gallery cannot fulfil digitisation requests or research enquires in the meantime. Please contact us after this date and the Gallery apologies for any inconvenience this may cause."
24. Pausing the refurbishment work and undertaking a deep clean to facilitate access to the collection for this negative would cost approximately £6,500. A further deep clean would need to be completed

once the building work is finalised, which was expected to be by the end of November 2023.

25. The requested negative is part of a much larger Bassano Studio Portrait Collection of 42,000 negatives. The collection is all stored together in approximate numbered order, but it may require the retriever to search through several boxes or shelves before identifying the negative in question. Early on in the building work the collection was decanted to allow unimpeded access to the store. Since the items were returned to the store it has not yet been possible to record the detailed locations of each of these negatives and boxes. However, once the space has been deep cleaned and the negatives are once again accessible, it would be likely that the negative could be located within an hour of searching.
26. The Gallery has confirmed that its view now is that section 1 of FOIA doesn't apply to this request because the negative (and any subsequent photographs created using the negative) aren't "recorded information". As explained above, the negative is part of its extensive collection of portraits, collected under its public task defined by the Museums and Galleries Act 1992.
27. The Gallery says it hadn't initially considered section 1 in detail as the guidance on the Commissioner's published guidance on FOIA refers to:

"Recorded information includes printed documents, computer files, letters, emails, **photographs** [the Gallery's emphasis], and sound or video recordings."
28. However, the Gallery says, it's now discussed similar cases with other cultural institutions, and it believes that the negative would be considered an object in its collection, rather than recorded information that it holds. The negative in question was gifted to the Gallery as part of a larger collection from Bassano & Vandyk Studios to become part of the Gallery's photographs collection. It wasn't created by Gallery employees and doesn't provide any information about the Gallery's internal workings.
29. Requesting a digital copy of this negative is the equivalent, the Gallery argues, of requesting a photograph of a sculpture or painting. It doesn't believe that a request for an image of any items in its collection would fall within the scope of FOIA.
30. When it receives a request for an image of an item in the collection, the Gallery says it directs the requester to the webpage of the item in the 'Explore our Collection' section of its website. Many of its collection items are digitised and have an image online available for review. If not, the requester is able to request that the image is digitised as a priority

through our Image Production process. The Gallery says that it followed this general process when it initially responded to the complainant. However, at the time it hadn't established that the request was outside of the scope of FOIA, and therefore this didn't form part of its response.

31. The Gallery's position now is that it doesn't believe that the request was a request for "recorded information", as it related to accessing an item in its collection. It also considers that the image isn't held in the format requested by the complainant, and producing this would require the expertise of the Gallery's Photographic Conservation consultant.
32. Furthermore, the Gallery says, accessing the item in question within the statutory timescale would cost in excess of the appropriate limit set by section 12 of FOIA. This is due to the additional cleaning necessary to make the space safe for the item to be accessed.
33. Requests for digitised copies of items in its collection can be made under the Image Production process, details of which are now linked from the Gallery's publication scheme.

The Commissioner's conclusion

34. The glass plate negative that's the focus of the complainant's request was gifted to the Gallery from Bassano & Vandyk Studios. It's now part of the Gallery's photographs collection.
35. The Commissioner accepts the Gallery's position that the glass plate negative isn't "recorded information" - it's an object in a collection. The Commissioner is also persuaded by the Gallery's argument that requesting a digital scan of the negative is equivalent to someone requesting a digital scan or photograph of a painting or sculpture. FOIA doesn't place such an obligation on a public authority.
36. It's possible to consider that the Gallery does hold the requested information because it holds the 'building blocks' to generate the information - it could theoretically provide the requested digital scan of the negative because it holds the glass plate negative. However, the Gallery has indicated the costs involved in retrieving the negative at the point of the request when building work was ongoing - more than £6,500. Section 12(1) would clearly be engaged.
37. But the Commissioner is satisfied that the Gallery doesn't hold the requested information under FOIA.
38. When the building work is finished, it may be possible to request a digital scan of the negative in question through the Gallery's Image Production process. The Gallery has advised that published information about that process is now linked from its publication scheme

(specifically, from section 7.7 of the scheme: 'Information relating to image rights and re-use'). Because the process is now noted from the Gallery's publication scheme, section 21 of FOIA might then be engaged, however, in respect of any future request for the information. This is because the information would already be reasonably accessible to the applicant, even with a fee.

Right of appeal

39. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

40. 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.
41. 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

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