

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 February 2024

Public Authority: Department for Culture, Media and Sport
Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant requested information from the Department for Culture, Media and Sport (DCMS) about the initial budget and costs breakdown allocated for HM King Charles III coronation event. DCMS refused to provide the information initially, withholding it under section 22 (Information intended for future publication) of FOIA and later relying on section 43 (Commercial interests).
2. The Commissioner's decision is that DCMS was entitled to rely on section 43(2) to refuse information within the scope of the request.
3. The Commissioner does not require further steps from DCMS in relation to this complaint.

Request and response

4. On 16 February 2023, the complainant wrote to DCMS and requested information in the following terms:
 - "1. Please could you provide me with the amount of money budgeted and/or allocated for HM King Charles III coronation in May.
 2. Please provide a breakdown of how the money is allocated. This

may be found in any budgeting forecasts that have been undertaken.

3. How much estimated income does HM Treasury expect to make from the coronation.”
5. DCMS responded on 8 March 2023. It confirmed that it held some information within the scope of the request, specifically that related to Part 1 and Part 2, but refused to provide it citing section 22 of the FOIA as the basis for doing so.
6. DCMS also stated that it did not hold information in relation to Part 3 of the request but informed the complainant that HM Treasury may have models or estimates and provided email address if the complainant wished to make an FOI request.
7. The complainant requested an internal review on 9 March 2023.
8. DCMS provided its internal review response on 5 June 2023 in which it maintained its original position.

Scope of the case

9. The complainant contacted the Commissioner on 25 June 2023 to complain about the way their request for information had been handled.
10. During the course of the Commissioner's investigation, DCMS revised its position.
11. DCMS explained that after further consideration it concluded that it incorrectly relied on section 22, as the requested information (the initial budget and costs breakdown) was never intended for publication.
12. Therefore, it decided that the appropriate exemption to withhold the requested information is section 43 (Commercial interests) of the FOIA, replacing section 22.
13. Given that the complainant did not object the DCMS' statement that it did not hold information in scope of Part 3 of the request, the Commissioner considers that the scope of his investigation is to determine whether DCMS was correct to rely on section 43 of the FOIA to withhold information in relation to Part 1 and Part 2 of the request.

Reasons for decision

Section 43 – Commercial interests

14. Section 43(2) of FOIA states that information is exempt if its disclosure under FOIA would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).
15. In order for section 43(2), to be engaged, three criteria must be met:
 - the harm which the public authority envisages must relate to someone's commercial interests;
 - the public authority must be able to demonstrate a causal relationship between disclosure and prejudice to those commercial interests. The resultant prejudice must be real, actual or of substance; and
 - the level of likelihood of prejudice being relied upon by the public authority must be met (i.e. it must be shown that disclosure would, or would be likely to, result in prejudice occurring).
16. DCMS considers that section 43(2) is engaged because releasing the information related to Parts 1 and 2 of the request would have an adverse impact on both the department and third party suppliers involved in the Coronation event, the list of which DCMS provided to the Commissioner in a Confidential Annex.
17. DCMS explained that the budget was developed in concert with HM Treasury, other government departments and third party suppliers. This necessitated the provision of commercially sensitive information necessary to forecast spend as accurately as possible. DCMS argued that "If such information were released it would provide competitors for future events details on their thinking and costing and weaken their positions in a competitive environment by revealing market-sensitive information or information of potential usefulness to competitors. It is also important that organisations are able to talk frankly with government and that they can expect confidence to be maintained in market-sensitive communications with DCMS."
18. DCMS further contended that releasing the initial, 'top end' budgets for programmes, where in fact they were delivered under budget, may also have negative commercial impact. It explained that this, if disclosed, could suggest to potential competitors in future events how much money the Government was prepared to spend and thus drive prices up

for programmes where the aim is to use procurement processes to drive the best value for money through competitive tenders.

19. DCMS referred to the currently starting procurement process for the next Operation London Bridge¹ delivery partner as an example of particular relevance to the above assertion. It argued that releasing information now about how much money was put aside for such activities, would significantly weaken the DCMS' negotiating position ahead of the procurement exercise.
20. To determine whether the exemption 43(2) is engaged, the Commissioner has considered the arguments and the withheld information provided by DCMS against the three requirements set out in paragraph 15 of this notice.
21. In relation to the first requirement, DCMS argued that: "If such information were released it would provide competitors for future events details on their thinking and costing and weaken their positions in a competitive environment by revealing market-sensitive information or information of potential usefulness to competitors."
22. The Commissioner is not persuaded that the prejudice DCMS envisages would in this case relate to the commercial interests of third parties, since the requested information is predominantly an estimated costs breakdown and its allocation for various types of activities rather than detailed commercially sensitive information. Therefore any reference to specific suppliers, which are part of the withheld information could be easily redacted if the information were to be disclosed, thus protecting commercial interests of those third party.
23. However, the Commissioner is satisfied that the prejudice envisaged by DCMS relates to its own commercial interests. He is persuaded that releasing information about the top budget would weaken its bargaining power if potential competitors in future procurement exercises knew how much government was prepared to spend on the latest similar, event.
24. This is particularly relevant, as indicated by DCMS, to the currently commencing procurement for the new Operation London Bridge, which

¹ The codename given to the death of the late Queen Elizabeth II. The Commissioner understands that the reference to the 'next Operation London Bridge' made by DCMS means in fact Operation Menai Bridge, the codename for the eventual death of King Charles III.

undoubtedly will require provision of some of the services delivered during the Coronation event.

25. The Commissioner notes that in its arguments DCMS did not draw a clear distinction between the prejudices which would or would be likely to occur if the information requested in Part 1 were disclosed (in relation to the overall budget) and the prejudice which would, or would be likely to occur if the separate information requested in Part 2 of the request (projected costs of each individual item making up the total budget). Whilst the Commissioner is satisfied that the disclosure of the information requested in both parts 1 and 2 of the request would cause prejudice to the department's commercial interests, he considers that the degree of such prejudice is different as between the two.
26. In respect of the information requested in Part 2 of the request, the Commissioner considers the degree of prejudice to the department's commercial interests which would be caused by disclosure would be substantial and significant. This is because knowledge of the more detailed and broken down budget allocation figures would provide future potential bidders with a commercially advantageous insight into the amount which the department may be willing to pay for specific services/contracts. This would undermine and weaken the bargaining position of the department, and their efforts to secure commercially favourable outcomes from future such bids which were the best value for taxpayers money.
27. By contrast, because the information requested in Part 1 of the request is a total 'high level' projected budget figure, the Commissioner considers that the disclosure of such less detailed and less specific information would not afford future potential bidders the same degree of scope for making 'informed' and commercially advantageous bids for contracts. The Commissioner considers that the high level total projected budget figure would, if disclosed, cause prejudice to the commercial interests of the department, because it would provide at least some insight into the amount which the department might be willing to pay for contracted services. However, the Commissioner considers that the degree of that prejudice is significantly less than that applicable to the more specific and therefore more commercially sensitive, information requested in Part 2 of the request, though still sufficient to engage the exemption.
28. Having considered both parts of the requests, the Commissioner is satisfied that DCMS demonstrated a causal link between disclosure and prejudice to its commercial interests and that that the risk is of substance.

29. Finally, in relation to the third requirement, based on the evidence available to him, the Commissioner accepts DCMS' position that the envisioned prejudice to its own commercial interest would be likely to occur. In other words the chance of the prejudice occurring is more than hypothetical and poses a real and significant risk and therefore meets the higher threshold of likelihood of prejudice being relied upon by the public authority.
30. Since the three criteria have been met, the Commissioner's decision is that the information withheld by DCMS engages the exemption under section 43(2) of the FOIA. As section 43 is a qualified exemption, the Commissioner has considered the balance of the public interest test.

Public interest test

Public interest arguments in favour of disclosure

31. The complainant did not offer any public interest arguments in favour of disclosing the information.
32. DCMS acknowledged that there is a public interest in transparency and scrutiny of expenditure of public money, which would help to ensure that public money is spent effectively. It also considered public interest in demonstrating that value for public money is obtained and that the public contract processes are conducted in a fair, open and honest way.

Public interest arguments in favour of maintaining the exemption

33. In its submissions to the Commissioner DCMS stated that the requested information, i.e., the initial budget and costs breakdown, was never intended to be in the public domain. As discussed earlier, the release of such information would provide potential competitors in future procurement processes with commercially sensitive information which would prejudice the commercial interests of DCMS. DCMS also argued that the initial budget, which contained the top amount, could indicate to the potential bidders what amount of money the government is prepared to spend for similar a event and consequently drive the prices up effectively weakening DCMS' bargaining power to obtain best value for money.
34. Furthermore, DCMS contended that releasing the initial budget breakdown does not provide any additional value to the public, given that the actual costs broken down into this level of detail will be released in due course. Therefore the arguments for transparency do not outweigh the necessity to withhold the requested commercially sensitive information.

Balance of public interest arguments

35. When balancing the opposing public interests, the Commissioner needs to decide whether it serves the public interest better to disclose the withheld information, or to withhold it, because of the interests protected by the relevant exemption.
36. The Commissioner accepts that, generally, openness is, in itself, to be regarded as something which is in the public interest. He also recognises the need for transparency and accountability on the part of public authorities and how they spend public money.
37. He recognises that there is public interest in knowing how the money had been allocated for the Coronation event. However, he notes that the budget and costs information within the scope of the request is merely indicative and not actual. This reduces the public interest value and weight of the information in terms of the transparency and accountability of the actual cost of the event.
38. The Commissioner also considered the relevance of the current procurement exercise for the new Operation London Bridge referred to in DCMS' argument. He acknowledges that, although there may be a significant time gap between those events, i.e., the Coronation and the Operation London Bridge, and therefore the requested information losing its commercial sensitivity with the passing time, he is of the view that the relevance of the latter lies in its very nature and unpredictability and therefore can be taken into account when considering whether the disclosure of the initial budget and the cost breakdown for the Coronation could have adverse impact on the current procurement exercise.
39. Further, the Commissioner considers that the eventual publication of the actual budget and the cost breakdown reflecting the same level of detail as in its initial costs calculation reduces the weight of the public interest argument in favour of disclosure.
40. Consequently, the Commissioner's decision is that the public interest factors tip the balance in favour of withholding the information and therefore DCMS was entitled to rely on section 43(2) of FOIA.

Other matters

41. As mentioned previously, DCMS initially refused to release the requested information relying on section 22 (information intended for future publication) of FOIA only much later in the process, changing it to section 43 (commercial interests).

42. DCMS explained to the Commissioner that it mistakenly understood that the requested information was the 'final budget' so information that was intended to be published and not the 'initial budget' which was never intended to be in the public domain.
43. The Commissioner wishes to remind DCMS about the importance of being clear what information is actually requested to ensure that all information requests are dealt with in a timely and correct manner.

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: 0203 936 8963

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

Jonathan Slee
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