

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 August 2024

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

Decision (including any steps ordered)

1. The complainant has requested information relating to the Government Art Collection from the Department for Culture Media and Sport (DCMS). DCMS refused to provide the information, citing section 14 (vexatious) as its basis for doing so. It upheld this at internal review.
2. The Commissioner's decision is that DCMS is not entitled to rely on section 14(1) in response to the complainant's requests.
3. The Commissioner requires DCMS to take the following steps to ensure compliance with the legislation:
 - issue a fresh response that does not rely on section 14 as its basis to refuse to comply with the request.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 21 October 2023 the complainant wrote to DCMS and requested information in the following terms:

"I would like to request the following information from the Government Art Collection¹ via the Freedom of Information Act and the Environmental Information Regulations². I would be grateful if you could forward the request to the most appropriate person.

Please note that I am only interested in information generated between 25 October 2022 and the present day. [They then also provided some specific instructions regarding contact including their contact details].

1. During the aforementioned period have any arts works from the Government Art Collection (GAC) been placed in either of the two properties listed below. If the answer to the above question is yes could you please provide full details. In the case of each building can you please state what art works were transferred to the property. In the case of each art work can you state its full title, the artist and the date it was acquired by GAC and at what cost? In the case of each art work can you state where it has been hung or placed in the building? Can you please specify whether it has been placed in the office or in residential accommodation? Can you please provide images of the artworks?

(i) ... Number 10 Downing Street

(ii)...Chequers

2. During the aforementioned period have any arts works been removed from the aforementioned two properties. If the answer to the above question is yes could you please provide full details. In the case of each building can you please state what art works were removed from the property. In the case of each art work can you state its full title, the artist and date it was acquired by GAC and at what cost? In each case of each art work can you state where it had been hung or placed prior to being removed. Can you please specify whether it was removed from office or residential accommodation? Can you please provide images of the artworks.

3. During the aforementioned period has the Prime Minister and or anyone acting on his behalf written to and or communicated with the Government Art Collections (GAC). Please note that I am only interested in that correspondence and communication which mentions and or in any way relates to any of the aforementioned art works and or any other art works in the Government Art Collection. If the answer is yes

¹ <https://artcollection.culture.gov.uk/about/what-is-the-government-art-collection/>

² The request constitutes an FOIA request and the Commissioner has assessed it as such.

can you please provide copies of this correspondence and communication.

4. During the aforementioned period has the Government Art Collection written to and or communicated with the prime minister and or anyone who can correspond and communicate on his behalf. Please note that I am only interested in that correspondence and communication which either mentions and or in any way relates to any of the aforementioned art works an or any other artworks in the Government Art Collection. If the answer is yes, can you, please provide copies of this correspondence and communication.

6. On 13 November 2023, DCMS responded. It refused the request citing section 14 (vexatious) as its basis for doing so. It explained that if the complainant narrowed their request to questions 1 and 2, it would be likely to be able to provide fully the requested information.

7. It said:

"To be specific, Questions 3 & 4 of your request oblige the department to sift through a substantial volume of information which falls in scope and carefully consider any redactions or exemptions that may apply. The request will naturally contain a large volume of sensitive information, and we would therefore be required to review each and every document that falls within scope, reviewing each on a line by line basis to redact names and other personal data. It has become clear that this is overly burdensome."

8. The complainant requested an internal review on 13 November 2023. He said:

"My request is focused on the activities of the Government Art Collection.

I am not asking for copies of all the department's correspondence and communication with the Prime Minister. Rather I am only seeking his correspondence with the Government Art Collection."

9. DCMS sent them the outcome of its internal review on 22 December 2023. It upheld its original position.

Scope of the case

10. The complainant contacted the Commissioner on 4 January 2024 to complain about the way their request for information had been handled.

11. The complainant disagreed that the request was vexatious and stressed that they were only seeking information held by the Government Art Collection not the DCMS as a whole. He described the request as being about GAC's core duties and responsibilities and that the third and fourth requests only involves that correspondence which relates to artworks owned and or managed by GAC.
12. The Commissioner has considered whether DCMS is entitled to rely on section 14(1) as its basis for refusing the complainant's requests of 21 October 2023.

Reasons for decision

13. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
14. In the Commissioner's view, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
15. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is the DCMS' rationale for relying on section 14(1) in this case.
16. The Commissioner believes that there is a high threshold – relevant to the particular circumstances of a case - for refusing a request on such grounds. He takes the view that this means that a public authority is most likely to have a viable case where:
 - The requester has asked for a substantial volume of information and
 - the authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the Commissioner and

- any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.³

17. DCMS argued the following in support of its position:

“We have 190 pages of emails within scope of Questions 3 and 4 of this request. They are spread across 4 folders. This includes a vast amount of personal information, mainly relating to names, numbers, addresses, and vehicle registrations for technicians who require access to No.10 Downing Street to service the referenced artworks, and for the authors of emails. It also contains loan agreements and insurance information on some of the artwork. Therefore the two most likely exemptions we would need to consider would be S40 and S43 [personal data and prejudice to commercial interests exemptions respectively].

While it is possible to do an electronic search on some of the emails, this is not the case for all of them. [DCMS] estimate[s] that it would take roughly 3-5 minutes to read through and apply exemptions to all of the emails within scope. This would be 9.5-16 hours of work. On top of that, it would then need to go through 3 levels of clearance involving a brief read through of all the information to catch anything missed, which [DCMS] estimate[s] at 1 minute per email, giving an additional 9.5 hours of work for the 3 additional people checking this work, meaning either 19 or 25.5 hours of work roughly.

Given the amount of time this would take, especially at the current time of government change where the GAC will themselves be doing a lot of changes, and the need to redact large swathes of the information, which would not actually be beneficial to the requester anyway, and therefore has a limited public interest, [DCMS] believe[s] that the utilisation of S14 is applicable in this instance.

As stated previously, we would be happy to take on a reduced request that removes the need to supply the correspondence relating to questions 3 and 4”.

18. The Commissioner does not find these arguments persuasive. DCMS appears to be focussing on the section 12 cost limit to apply section 14. Under section 12, a central government authority is not obliged to respond to requests which take more than 24 hours of work. A public authority cannot include the time taken to consider exemptions when

³ This approach is set out in the Commissioner’s guidance on section 14(1) of FOIA <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

calculating the time for compliance under section 12. However, following numerous tribunals, it can take this time into account under section 14 as part of an argument about the oppressive burden involved in compliance.

19. In the extreme case described above, according to DCMS the amount of time it would take to respond to this set of requests is 25 hours. The Commissioner accepts that giving consideration to commercial interests under section 43 may take a certain amount of deliberation although DCMS did not sufficiently explain the extent to which such deliberation would contribute towards an oppressive burden. However, he sees little deliberative effort involved in deciding whether the contact details and vehicle registration details of technicians would need to be redacted under section 40. Similarly, it is a long established position that in most cases, officers at public authority below the level of Senior Civil Servant can reasonably expect their personal data to be withheld in response to FOIA requests. In considering these points, the Commissioner is also conscious that there is no set time or cost limit under section 14(1).
20. The Commissioner recognises that if there is a high volume of exempt personal data within requested information, it may be difficult to guarantee that all the personal data will be caught at the first review. He is however uncertain what the "3 levels of clearance" are which are required to "catch anything missed". He accepts that such checks may not just be for personal data but, again, he is unclear why there are three levels to the checking process. DCMS gave no further explanation as to what this involved and why complying with its obligations under FOIA needed three additional layers of checking. Had it done so, he would have given greater consideration to this part of its submission.
21. The Commissioner accepts that not all the requested information can be searched electronically which will increase the effort required in responding. However, this is often the case for information requested under FOIA. The information in this case covers a period of a year and would have been created relatively recently. It is far from clear from DCMS' explanation, therefore, how much of the information would be recorded in a version that was not electronic or not searchable electronically.
22. The Commissioner notes DCMS' view that, after redaction, the complainant may not have been satisfied with the outcome. The Commissioner would consider this somewhat speculative without liaising further with the complainant. Information which is neither personal data nor commercially sensitive may, of itself, be of interest to requesters. For example the date of an email may, of itself, be of interest or the volume of emails. The Commissioner has therefore afforded DCMS's

view on redaction little weight in countering the value or purpose of the request.

23. In light of all the above, the Commissioner is not satisfied that DCMS is entitled to rely on section 14(1) as its basis for refusing to comply with this request (ie the four requests constituting the FOIA request of 21 October 2023). He recognises that complying would impose somewhat of a burden on DCMS but he does not consider this burden to be grossly oppressive such that the threshold for engaging section 14(1) has been reached.
24. For completeness, the Commissioner is also not satisfied that any other factors relevant to the engagement of section 14(1) have been demonstrated in this case to otherwise deem the request as vexatious.

Right of appeal

25. 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

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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