

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2013

Public Authority: Tate
Address: Millbank
London
SW1P 4RG

Decision (including any steps ordered)

1. The complainant has requested Tate to disclose the amount of sponsorship it has received from BP for each of the past 23 years. Tate refused the request citing section 41 and 43 of the FOIA.
2. The Commissioner's decision is that Tate has acted appropriately by refusing to disclose the requested information under section 43 of the FOIA. As he is satisfied that section 43 of the FOIA applies in this case, he has not gone on to consider section 41 and requires no further action to be taken.

Request and response

3. On 12 April 2012 the complainant wrote to Tate and requested information in the following terms:

“(1) The total amount of sponsorship provided by BP to the Tate for each of the past 23 years.

(2) Any confidentiality agreement contained within the contracts between BP and Tate for each of the years where sponsorship was provided”.
4. Tate responded on 28 May 2012. In respect of question (1), it stated that the information was exempt from disclosure under section 41 and 43 of the FOIA. Regarding question (2), Tate released any recorded information it held addressing this element of the complainant's request.

5. The complainant wrote to Tate on 8 June 2012 to request an internal review in respect of question (1) of his request.
6. Tate completed its internal review on 5 July 2012. It informed the complainant that it remained of the view that the requested information in question (1) of his request remained exempt from disclosure under section 41 and 43 of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 25 March 2013 to complain about the way his request for information had been handled. Specifically he asked the Commissioner to consider whether Tate had acted appropriately by refusing to release the information he requested in question (1) of his request under section 41 and 43 of the FOIA.
8. The complainant made no complaint about how Tate handled question (2) of his request. This notice will therefore focus on question (1) only and the application of section 41 and 43 to this information.
9. The Commissioner will first consider Tate's application of section 43 of the FOIA. He will only go on to consider section 41 if he finds that section 43 of the FOIA does not apply.

Reasons for decision

10. Section 43 of FOIA states that information is exempt if its disclosure would or would be likely to prejudice the commercial interests of Tate, a third party or both.
11. Section 43 is a qualified exemption. Therefore, in addition to demonstrating that disclosure would or would be likely to prejudice the commercial interests of Tate, a third party or both, it also needs to apply the public interest test. For this, Tate needs to consider the public interest arguments for and against disclosure and establish whether the public interest is best served by maintaining the exemption or by disclosure.
12. Tate submitted very detailed arguments to the Commissioner to support its application of this exemption. It marked many of these arguments as being confidential and commercially sensitive themselves. As a result the Commissioner has had to attach a confidential annex to this notice to outline his analysis of section 43 of the FOIA.

13. As Tate has specifically stated that it does not wish the majority of its arguments to be released to the complainant or the general public, it is not possible to go into any detail in the main body of this notice.
14. The Commissioner has however considered the arguments submitted by the complainant and Tate in detail. He has concluded that disclosure of the requested information would be likely to be prejudicial to the commercial interests of Tate and therefore section 43 of the FOIA applies in this case.
15. With regards to the public interest test, again the Commissioner has given the arguments submitted for and against disclosure detailed consideration. He has concluded in this case that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exemption.
16. The Commissioner is therefore of the view that the requested information should not be disclosed under the FOIA and that no further action is required with regards to this request.

Procedural issues

17. Section 17(1) of the FOIA requires a public authority to issue a refusal notice to an applicant within 20 working days of the receipt of their request for any information it considers is exempt. This should state the exemption(s) being applied and explain why the public authority considers it or they apply.
18. In this case it is noted that Tate received the complainant's request on 17 April 2012. However, it did not issue a refusal notice to the complainant until 28 May 2012. As the refusal notice was not issued within 20 working days of the request, the Commissioner has found that Tate was in breach of section 17(1) of the FOIA in this case.

Right of appeal

19. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

20. 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.
21. 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

Rachael Cragg
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SK9 5AF