

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 20 January 2023

**Public Authority:** The British Museum  
**Address:** Great Russell Street  
London  
WC1B 3DG

#### **Decision (including any steps ordered)**

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1. The complainant submitted a request to the British Museum (the Museum) seeking full legible photographic copies of the eleven tabots also known as the 'Ethiopian altar tablets'. The Museum confirmed that it held the requested information but considered this to be exempt from disclosure on the basis of section 27(1)(a) (international relations) of FOIA.
2. The Commissioner's decision is that the information is exempt from disclosure on the basis of section 27(1)(a) and that in all the circumstances of the case the public interest favours maintaining the exemption.
3. No steps are required.

## Request and response

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4. The complainant submitted a request to the British Museum on 11 October 2021 seeking 'full legible [photographic] copies of the eleven wood and stone tabots also known as the Ethiopian altar tablets'.<sup>1</sup>
5. The Museum responded on 4 February 2022 and confirmed that it held the requested information but considered this to be exempt from disclosure on the basis of section 27(1)(a) (international relations) of FOIA. This was on the basis that disclosure of the requested information would be likely to prejudice relations between the UK and Ethiopia.
6. The complainant contacted the Museum on 29 March 2022 and asked it to conduct an internal review of this response. He challenged the decision to rely on section 27(1)(a) to withhold the information because he argued that the Ethiopian government is a 'non-religious ethnofederalist parliamentary republic' and in his opinion, whilst the release of the requested information might affect relations with the Ethiopian Christian Church it would not prejudice relations between the UK and any other state.
7. The Museum informed the complainant of the outcome of the internal review on 28 April 2022. The Museum explained that it had considered the points he had made but it remained of the view that the disclosure of the information would be likely to harm the UK's relations with Ethiopia.

## Scope of the case

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8. The complainant contacted the Commissioner on 9 May 2022 to complain about the Museum's decision to withhold the information he had requested on the basis of section 27(1)(a) of FOIA. The complainant submitted detailed submissions to support his complaint which are considered below.

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<sup>1</sup> Further information about these objects can be found here <https://www.britishmuseum.org/about-us/british-museum-story/contested-objects-collection/maqda-collection>

## Reasons for decision

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### Section 27 – international relations

9. Section 27(1)(a) of FOIA states that:

'(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice— (a) relations between the United Kingdom and any other State'

#### The Museum's position

10. The Museum explained that the tabots, as well as being culturally significant, are also objects of religious veneration which hold great spiritual significance for many Ethiopians. The Museum argued that if it were to release this information at this time, it would cause great offence to the government of Ethiopia at a time when discussions with the Museum about the objects are ongoing. The Museum noted that the UK's government's ability to effectively conduct international relations relies on it being able to retain the trust and confidence of other countries.

#### The complainant's position

11. The complainant provided the Commissioner with detailed submissions to support his position that disclosure of the information would not be likely to harm relations between the UK and Ethiopia. The Commissioner has summarised these submissions below:
12. The complainant argued that section 27(1)(a) was inapplicable because although disclosure of the information may prejudice relations between the Museum the Ethiopian branch of the Christian Church it would not be likely to prejudice relations between the UK and another state, i.e. the 'Ethnofederalist Parliamentary Republic of Ethiopia'. He suggested that it was clear that the Museum's explanation in its refusal notice that 'when discussions with the British Museum are on-going' this demonstrated that its concerns were in respect of its relations with the advocates of the Christian Church not in respect of relations with UK and the Ethiopian government.
13. The complainant suggested that to use this exemption to protect relations between the Museum and Church, whilst purporting to protect relations between the UK and another state, is an insult to the numerous other countries from where countless artifacts have been extracted for retention and/or display at the British Museum. This is because such an approach:

'surreptitiously affording some privilege toward a single sectarian faction, also instantly creates great prejudice against any of all other States whose artifacts—accessible to UK citizens via the British Museum—are not inappropriately exempted by s.27(1) FOIA (with reference to Greece and the Elgin Marbles; Egypt and the Rosetta Stone; and, China and the Ming Dynasty Porcelain, to name but a few other Nation States)'

14. The complainant further argued that it was not relevant, given the information that he was requesting, for the Museum to even consider whether relations between the UK and Ethiopia would be harmed by disclosure of the information. This was on the basis that:

'My FOIA Request seeks access to copies of information recorded upon British Museum objects acquired in 1868, by Lieutenant General Sir Robert Napier, as spoils of a war between Victorian Britain and Emperor Theodore the 3<sup>rd</sup> of Abyssinia. That empire state no longer exists and, therefore, to the exclusion of its existence, the likelihood of incurring prejudice to relations between the United Kingdom and that non-existent state is impossible; and, because the meaning of any other state in s.27(1) of the FOIA legislation does not mean any state interest extraneous to that of a different state whereby relations may be prejudiced with the United Kingdom, the British Museum's reference to discussions with the Ethnofederalist (non-secular) Parliamentary Republic of Ethiopia, should be further precluded from the test in this case.'

15. The complainant also noted that in its public interest assessment the Museum had made reference to 'the current public debate about the origins of some historic collections and the question of whether certain objects, including the Ethiopian Tablets, should be returned to their place of origin.' However, the complainant argued that this was an entirely irrelevant point given that The British Museum Act 1963 forbids the restitution of objects in its collection while they are fit to be retained for sake of formal study and research purposes. He argued that this scenario clearly applied in this case. As a result in the complainant's view the Museum's apparent willingness to consider restitution of such objects was against the law and this should be considered by the Commissioner in his assessment of section 27(1)(a) of FOIA.

#### The Commissioner's position

16. In order for a prejudice based exemption, such as section 27(1), to be engaged the Commissioner believes that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption.
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance.
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, confirmation or denial 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
17. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested that in the context of section 27(1), prejudice can be real and of substance 'if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary'.<sup>2</sup>
18. With regard to the first criterion of the test set out above, the Commissioner accepts that the type of harm that the Museum believes would be likely to occur if the information was disclosed is applicable to the interests protected by section 27(1)(a).
19. With regard to the second criterion, the Commissioner appreciates the complainant's point that the Museum's discussions in respect of the objects would appear to have been with the Ethiopian branch of the Christian Church, as opposed to with the Ethiopian government. The Commissioner also acknowledges, as the complainant has emphasised, that the Ethiopian government is a secular one. The Commissioner also recognises that the Museum operates at arm's length and independently of the UK government.

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<sup>2</sup> Campaign against Arms Trade v the Information Commissioner and Ministry of Defence EA/2007/0040 (26 August 2008)

20. However, in the Commissioner's view it is plausible for the Museum to argue that disclosure of the objects would be likely to prejudice the UK's relations with Ethiopia. The Commissioner is of this view because of the inherent sensitive nature of the objects which are the focus of the complainant's request and the manner in which the objects, to date, have been stored. The Commissioner notes that the Museum's website explains that in line with earlier 'agreements with the church, and in light of their sacred nature, the tabots from Maqdala are not on public display. They are housed in a location specially set aside for the purpose, created and maintained in close consultation with the Ethiopian Orthodox Church.' The Commissioner understands that the objects have never been displayed since their acquisition and that some of these items are considered so sacred and holy that they can be looked at only by Ethiopian Orthodox priests.<sup>3</sup>
21. As a result the Commissioner is satisfied that disclosure of images of the objects would be likely to cause great offence to the Ethiopian Orthodox Church and also parts of the Ethiopian population. Despite the separation between the church and state in Ethiopia and the distinction between the Museum and the UK government, in the Commissioner's view given the sensitivity of the objects it is difficult to envisage how such an act, which would arguably be seen by parts of Ethiopian society as an offence and provocative one, would not have some impact on diplomatic relations between the two states. That is to say, the Commissioner considers it plausible to argue that disclosure of the requested information is a matter which would be raised at diplomatic or government level. In the Commissioner's view to not accept this potential outcome is to ignore the larger political and diplomatic landscape within which the institutions such as the Museum and Ethiopian Christian Church sit. The Commissioner is also conscious of the findings of the CAAT decision cited above which, as noted, stated that section 27 will be engaged if 'a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary' following the disclosure of information. The Commissioner considers that such a threshold is clearly met in this case.
22. With regard to the third criterion, the Commissioner is satisfied that the risk of such prejudice occurring is one that is more than hypothetical. He has reached this view based on rationale set out above, ie the inherent sensitivity of the objects means that disclosure of an image of them

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<sup>3</sup> <https://hansard.parliament.uk/lords/2022-03-30/debates/D4615593-4C9D-40ED-95F8-A6575E74F257/BritishMuseumEthiopianSacredAltarTablets>

would likely to result in a diplomatic response or action. The Commissioner considers that the likelihood of such prejudice occurring is arguably increased given the ongoing discussions with the Museum in respect of these objects at the point of the request.

23. In reaching this conclusion the Commissioner notes the complainant's point at paragraph 14. However, in the Commissioner's view the harm in disclosure of the information arises directly from the offence that would be caused to the Church and parts of the Ethiopian population, and in his view, in turn the likely diplomatic reaction from the Ethiopian state. The fact that the form of government now in place is a federal parliamentary republic, as opposed to the previous empire, does not therefore affect the engagement of section 27(1)(a), nor for that does the passage of time since the objects were first acquired. Furthermore, the Commissioner is also not persuaded that the complainant's arguments in respect of The British Museum Act impact in any way on the engagement of section 27(1)(a) of FOIA. It is not within the Commissioner's remit to consider such matters (albeit he notes that the museum's stated ambition is to seek to lend these objects to an Ethiopian Orthodox Church in the UK).
24. The Commissioner is therefore satisfied that the withheld information is exempt from disclosure on the basis of section 27(1)(a) of FOIA.

### **Public interest test**

25. Section 27 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemption contained at section 27(1)(a) outweighs the public interest in disclosing the information.
26. The Museum acknowledged that there is a public interest in the disclosure of the information because of the current public debate about the origins of some historic collections and the question of whether certain objects should be returned to their place of origin. However, it argued that the UK government's ability to effectively conduct international relations relies on it being able to retain trust and confidence of other countries. Maintaining these good relationships internationally is a vital part of the UK government's role in promoting and protecting the wider interests of the UK's citizens and companies abroad. Disclosure of information which harms the UK's relations with Ethiopia would therefore be against the public interest.
27. The complainant explained that he wished to access the requested information in order to aid his study and research and that there was a clear public interest in the Museum facilitating such activities.

28. With regard to attributing weight to the public interest in disclosure the Commissioner recognises that there is a current debate around returning certain cultural objects to their place of origin, albeit the Commissioner is not entirely clear how disclosure of the images sought by the complainant would necessarily further this debate. In the Commissioner's opinion there is arguably a greater public interest in the disclosure of information in order to assist and inform the study of such objects.
29. However, in the Commissioner's view such a public interest is significantly outweighed by the public interest in ensuring that the UK maintains effective international relations with other states. In the circumstances of this case the Commissioner considers that there is a clear and compelling public interest in ensuring the UK's relations with Ethiopia are not harmed, especially given the ongoing nature of discussions between the Museum and Church in respect of these objects.



## Right of appeal

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

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

31. 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.
32. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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**Cheshire**  
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