

The Freedom of Information Act 2000

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CATEGORY:

ARTICLE

The Freedom of Information Act was introduced a year ago to help people better understand how public bodies work, why they make the decisions they do and how they spend public money. The declared objective of the Act was to foster a culture of openness in government and public bodies.

The Act provides a person with the right to access information held by a public authority. The steps below provide key definitions and features of the Act.

1. Any person of any nationality can request information.
2. The Act covers public authorities in England, Wales and Northern Ireland. This includes government departments and agencies, local government, police, NHS, state schools, colleges, universities and state owned companies. A full list of authorities covered by the FOIA can be found on the Department of Constitutional Affairs Website (<http://www.dca.gov.uk/foi/coverage.htm>). Included within the list are cultural organisations such as the Arts Council of England and Wales, the British Library, the British Museum and the National Gallery.
3. All information is covered, irrespective of format and can be requested for any reason, including news stories, research, legal cases and commercial reasons.
4. The Act came into effect on 1 January 2005. The Act is retrospective, which means that any information can be sought, not just information created or recorded after 1 January 2005.
5. A public authority must reply to a written request within 20 working days, which is extended to 30 days in some cases where information has been archived.
6. The Act provides a number of exemptions or reasons as to why information may be withheld. They are very detailed. Exemptions cover information which is reasonably accessible by other means, information which would or would be likely to prejudice international relations or relations between administrations within the UK, information provided in confidence where disclosure would constitute an actionable breach of confidence, personal data covered by the Data Protection Act, trade secrets, information which if disclosed would, or would be likely to prejudice the commercial interests of any person (including the public authority holding it). The exemption may be absolute or qualified. Unless the exemption is absolute, the public authority must be able to show that the public interest in withholding the information is greater than the public interest in disclosing it. Where the information whose disclosure is requested is covered by an exemption listed in the Act, depending on the exemption relied upon, the public authority has the right to refuse to say whether it holds the information, or to refuse to disclose it or blank out exempt material in a document which is otherwise disclosed.
7. If a person is unhappy with the way a request has been dealt with, or with the information provided, he or she can complain to the Information Commissioner. If the Information Commissioner is unable to resolve the complaint informally, he will issue a Decision Notice stating whether or not the public authority has complied with the Act. If a person is unhappy with the decision of the Information Commissioner, they can appeal to the information tribunal.

The Case of the National Maritime Museum

On 12 January 2005, a request was made to the National Maritime Museum for documents and correspondence relating to any payments made to Conrad Shawcross for the commission of his temporary installation of his sculpture "Continuum" staged at Queen's House in Greenwich. The Museum refused to release the information. Matthew Davis, a freelance journalist, complained to the Information Commissioner, alleging that the Museum had failed to provide information in accordance with the Act.

The Museum explained that at the time the request for information was made they were involved in active negotiations with another artist for a new commission as part of their next "New Visions of the Sea" series. They argued that release of information on payments to Mr Shawcross for his installation of "Continuum" would prejudice their own and Mr Shawcross' commercial interests.

Legitimate commercial interests are covered by an exemption under the Act. This exemption, however, is qualified and subject to a public interest test. The Museum argued that a public interest existed in maintaining this exemption, which outweighed the public interest in disclosing the information.

On 20 June 2005 the Information Commissioner Richard Thomas released a Decision Notice. The Information Commissioner agreed that the commercial interests exemption applied and decided that public interest in maintaining this exemption at that time overrode the public interest in disclosing the requested information. He therefore gave notice that no remedial steps had to be taken by the Museum.

In summary, the Commissioner decided that the public interest in protecting the National Maritime Museum's bargaining position during active and contemporaneous negotiations for a project of a similar nature overrode, for the time being, the public interest in making public the financial details of the negotiations which immediately preceded those active negotiations. The Commissioner noted that as a consequence of this decision, the potential prejudice to Conrad Shawcross' commercial interest would also be avoided because the requested information related to both parties. However, the Commissioner considered that the potential prejudice to Conrad Shawcross' commercial interests was not, of itself, sufficient reason to maintain this exemption.

The Commissioner added that the likelihood of prejudice to the National Maritime Museum would diminish with time and with the conclusion of the active negotiations to the point where any prejudice to the National Maritime Museum's commercial interests would no longer outweigh the public interest in releasing the information requested.

The complainant has appealed against the decision of the Commissioner.

The case shows how reasons can be found as to why information does not have to be released. As highlighted, however, this was qualified so that with the passage of time the need to withhold information would diminish and be overridden by the public interest to disclose.

The decision is also a reminder to individuals and companies that the information they release to public authorities, for example financial and other details provided in the course of a tendering process, is at risk of being disclosed to anyone who asks the public authority, without necessarily being put on notice of the intention to release.