

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 May 2024

Public Authority: Birmingham City Council
Address: Council House
Victoria Square
Birmingham
B1 1BB

Decision (including any steps ordered)

1. The complainant requested information about artwork owned by Birmingham City Council (the "Council"). The Council disclosed some information and withheld other information under the exemptions for law enforcement (section 31), health and safety (section 38) and commercial interests (section 43).
2. The Commissioner's decision is that the Council correctly withheld the information in part 6 of the request under section 31.
3. The Commissioner does not require further steps.

Request and response

4. On 29 January 2024 the complainant asked for the following information:
 - "1. How many pieces of artwork does Birmingham City Council own?
 2. How many pieces are on display?
 3. How many pieces are in storage?
 4. What is the approximate total value of the council's visual art collection?
 5. What is the approximate value of the artwork which is in storage?
 6. Could you provide a list of the top ten most valuable artworks in storage and the top ten most valuable artworks on display - including their respective values?"
5. Birmingham City Council (the "Council") responded on 29 January 2024 and disclosed information relating to parts 1-3 of the request. The Council withheld the information in parts 4-6 of the request under the exemption for law enforcement (section 31).
6. Following an internal review the Council wrote to the complainant on 14 February 2024. It stated that it was maintaining its position.

Scope of the case

7. On 14 February 2024 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. During the Commissioner's investigation the Council confirmed that, in addition to maintaining its reliance on the exemption in section 31(1)(a), it was also relying on the exemptions for health and safety (section 38) and commercial interests (section 43) to withhold the information. In relation to parts 4-5 of the request, the Council also dropped its reliance on exemptions and disclosed the information to the complainant.
9. The Commissioner has considered whether the Council correctly withheld the information in part 6 of the request.

Reasons for decision

10. The following analysis sets out why the Commissioner has concluded that the Council was entitled to rely on the exemption in section 31(1)(a) of the FOIA in this particular case.

Section 31(1)(a) – the prevention or detection of crime

11. The Council withheld the information in part 6 of the request under section 31(1)(a), namely:

“Could you provide a list of the top ten most valuable artworks in storage and the top ten most valuable artworks on display - including their respective values?”

12. Section 31(1)(a) of the FOIA says that:

“Information ... is exempt information if its disclosure under this Act would, or would be likely to, prejudice- (a) the prevention or detection of crime...”

13. The exemption in section 31(1)(a) covers all aspects of the prevention and detection of crime. It could apply to information on general policies and methods adopted by law enforcement agencies.
14. The exemption also covers information held by public authorities without any specific law enforcement responsibilities. It could be used by a public authority to withhold information that would make anyone, including the public authority itself, more vulnerable to crime.
15. Whilst in some instances information held for the purposes of preventing or detecting crime will be exempt, it does not have to be held for such purposes for its disclosure to be prejudicial.
16. The Council has argued that the requested information requested is not available to the public and by placing a value on artworks and identifying the most valuable artworks within our collections, would make the Council more vulnerable to theft and crime by increasing the risk of opportunistic theft and organised professional art theft.
17. The Council has argued that the risk of art theft is very real, pointing to the recent theft of a bronze age artefact from a museum in

Cambridgeshire¹. The Council has stated that the value of the artefact was widely publicised due to a public campaign to raise funds so the museum could acquire the artefact. The Council has also noted that the artefact was described on the museum's website as its "most prized object"², making it clearly identifiable for theft.

18. The Council has confirmed that there have also been a number of break-ins at two Birmingham museums in recent years, as well as a series of prolonged break-in attempts at one museum during recent months. In the Council's view, therefore, the risk to Birmingham museums is very real and substantial and would be further exacerbated if the information were to be disclosed.
19. The Council has further confirmed that the location of art in "storage" is an accredited museum with weekly public access, which has been widely publicised by local media³. In relation to the potential risk of identified items of value being targeted for theft, therefore, this is heightened by other publicly available information.
20. In addition to considering the Council's arguments in this matter the Commissioner has also referred to decision notices which set out his conclusions about equivalent applications of section 31(1)(a) and to his published guidance.
21. The Commissioner's guidance on the application of section 31(1)(a) confirms that when deciding whether disclosure would prejudice the prevention or detection of crime, authorities do not have to limit their consideration to the harm that the requested information could cause on its own. The exemption can take account of any harm likely to arise if someone pieced together the requested information with other information to form a broader picture. This is commonly known as the 'mosaic effect'⁴.

¹ <https://www.museumsassociation.org/museums-journal/news/2024/05/ely-museum-devastated-after-theft-of-bronze-age-treasures/>

² <https://news.sky.com/story/ely-museum-devastated-after-despicable-theft-of-irreplaceable-bronze-age-gold-artefacts-13131443>

³ <https://www.birminghammail.co.uk/whats-on/whats-on-news/birmingham-hidden-museum-collection-how-15013341>

⁴ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-31-law-enforcement/how-should-we-apply-the-prejudice-test/>

22. The Commissioner has issued a number of decision notices⁵ which relate to requests for details of empty properties. These notices confirm that the requested information was collected for council tax purposes and to inform public authorities' policies aimed at returning empty homes to the housing market. However, the Commissioner was satisfied that, if disclosed, squatters could use the information. Although squatting was not (at that time) a criminal offence, squatting is associated with criminal damage, for example when entering and securing properties. Criminal gangs who strip buildings of valuable materials and fixtures could also use the list to target properties.
23. In relation to the mosaic effect, in this case the Commissioner is satisfied that information in the public domain about the storage locations of Council owned artworks combined with information about specific artworks held and their value would increase the likelihood of these objects being targeted by criminals. It follows that disclosure of the information would be likely to prejudice the prevention of crime.
24. In relation to the Commissioner's conclusions in decision notices relating to the application of the exemption to information about empty properties, he considers that these conclusions are directly transposable here. The common factor here is the placing of specific information in the public domain which provides otherwise unavailable knowledge to those contemplating theft which would provide an identifiable incentive for and facilitate crime.
25. The Commissioner accepts that the potential prejudice described by the Council clearly relates to the interests which the exemption contained at section 31(1)(a) of FOIA is designed to protect.
26. The Commissioner is also satisfied that the prejudice being claimed is "real, actual or of substance", and that there is a causal link between disclosure and the prejudice claimed. It is clearly logical to argue that disclosing details of specific artworks and their value, when combined with publicly available information about their location, would provide those intent on committing art theft with knowledge needed to facilitate their goal. The Commissioner, therefore, considers that the exemption is engaged.
27. Section 31(1)(a) is a qualified exemption and is subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has

⁵ See, for example: <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4023146/ic-168014-r2d1.pdf>; <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4023319/ic-196429-s2x5.pdf>

considered whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest in disclosure

28. The Council has acknowledged that, at a time when its assets are under public scrutiny there is a need to be open and transparent with the public on the value of assets, including artwork. The Council has also accepted there is a general public interest argument in ensuring openness and transparency.
29. The complainant considers that the Council has wrongly withheld the information and has argued that it is out of step with the approach taken by other authorities. The complainant provided the Commissioner with a number of links to information published by public authorities which they considered supported this argument.

Public interest in maintaining the exemption

30. The Council has argued that professional museum thefts have increased during the global pandemic and disclosure of collection values is akin to an open advert to professional and organised crime. It has also highlighted broader disruption caused by break-ins and the detrimental effect of these to staff working at these premises.
31. The Council has further argued that, its current financial hardship precludes additional expenditure on security measures around museums and storage facilities. The Council maintains that disclosure would make it likely that it would have to pay for the cost of break-ins and damage to its properties, which could be better spent elsewhere delivering public services.
32. The Council also considers that disclosure would generate the risk of the loss of culturally important artefacts and artwork which would no longer be available for the public's benefit of learning and enjoyment. In the Council's view it is in the public interest to withhold this information, so members of the public can enjoy and appreciate the displays of art instead of focusing on their financial value.

The Commissioner's conclusions

33. In balancing the public interest arguments, the Commissioner accepts that disclosure would to some extent help to increase openness and transparency around the Council's artwork assets which are, of course, publicly owned assets.

34. In relation to the suggestion that the Council's position here is out of step with the approach taken towards transparency by other authorities, the Commissioner has viewed the links provided by the complainant. In the Commissioner's view none of these provide evidence that authorities have disclosed the equivalent of the details identified in part 6 of the request.
35. The Commissioner also acknowledges that there is a clear public interest in protecting society from the impact of crime, as this helps prevent the criminal acts which adversely impact on the public's wellbeing and on the public purse.
36. In this case, whilst the Commissioner accepts that there is a public interest in transparency around art assets owned by the Council, he considers that the public benefits of disclosing details of specific art assets and their values are outweighed by the public interest in protecting such valuable public assets from theft. He also considers that the Council's disclosure of the total values in parts 4 and 5 of the request go some way to addressing the public interest in this matter.
37. The Commissioner has accepted that disclosing the information would be likely to result in these artworks being targeted for theft. He considers that, factoring in the additional strain on public resources this would generate alongside the loss of valuable public assets and cultural artifacts leads to the logical conclusion that the public interest in this case favours withholding the exemption. The Commissioner, therefore, considers that the public interest in maintaining the exemption outweighs the public interest in disclosure.
38. Consequently the Commissioner has determined that the Council appropriately applied section 31(1)(a) FOIA to the withheld information.

Right of appeal

39. 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

40. 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.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Christopher Williams
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