

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 April 2024

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

Decision (including any steps ordered)

1. The complainant has requested information from the British Museum (Museum) regarding a contract and/or formal agreement with BP.
2. The Commissioner's decision is that the Museum was entitled to aggregate three requests under section 12(4) of FOIA and is entitled to rely on section 12(2) of FOIA to neither confirm or deny holding the requested information.
3. The Commissioner is also satisfied that the Museum met its obligations under section 16 by offering advice and assistance.

Request and response

1. Between 24 February 2023 and 7 June 2023, the complainant and other representatives from a specified organisation wrote to the Museum and made four requests for information relating to similar information and one internal review request. The full details of these requests are included in Annex A at the end of this decision notice.
2. The Museum responded to the fourth request on 5 July 2023, advising it could neither confirm nor deny holding the requested information as doing so would exceed the appropriate limit set out under section 12. It explained that the complainant and other representatives from a specified organisation had made multiple requests for similar

information within a period of 60 working days, and therefore the requests were being aggregated under section 12(4) of FOIA.

3. Following an internal review the British Museum wrote to the complainant on 26 September 2023. It maintained its position.

Scope of the case

4. The complainant contacted the Commissioner on 3 November 2023 to complain about the way their requests for information had been handled.
5. The Commissioner considers that the scope of his investigation is to consider whether the Museum was entitled to aggregate the requests under section 12(4) and whether it was then entitled to refuse to confirm or deny holding the requested information in accordance with section 12(2) of FOIA.

Reasons for decision

Section 12(4) – Aggregation of related requests

6. When the public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”) can be satisfied.
7. Section 12(4) of FOIA states:

“The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

 - (a) by one person, or
 - (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”
8. Regulation 5 of the Fees Regulations states:

“(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act

would, apart from the appropriate limit, to any extent apply, are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concern or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which –

(a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and

(b) those requests are received by the public authority within any period of sixty consecutive working days.

(3) In this regulation, “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

9. The Museum advised the Commissioner that there had been four requests made within a 60-day period, by individuals acting on behalf of a specific organisation. Two of the requests came from the complainant directly, whereas the remaining request came from other individuals believed to be working for/with the specified organisation.
10. The Commissioner has reviewed the wording of all the requests and is satisfied that the Museum was entitled to aggregate three of the four requests. The three aggregated requests all relate to the Museum’s relationship with BP, sponsorship agreements and were all made within 60 consecutive working days.
11. Having reviewed the wording of the request made on 12 April 2023, the Commissioner is satisfied that the complainant was not attempting to make a new request for information, but was simply requesting an internal review based on a previous request. Whilst the Commissioner acknowledges that the request relates to the Museum’s relationship with BP, he is satisfied that the wording of the request is attempting to challenge a previous response and is not an attempt to make a request for information.

12. For the above reason, the Commissioner has determined that the Museum was not entitled to include this request in their aggregation under section 12(4).
13. The Commissioner does not require the Museum to take any further action regarding the remaining request which it was not entitled to aggregate, as he has already determined that, on the balance of probabilities, no further information was held.¹
14. As the Commissioner is satisfied that the Museum was entitled to aggregate three of the requests, he will now go on to consider whether confirming or denying if the requested information is held would exceed the cost limit.

Section 12 – Cost of Compliance Exceeds Appropriate Limit

Request dated 7 June 2023

15. The reasoning below examines whether the Trust was entitled to rely on section 12(2) of FOIA to refuse to comply with the requests.
16. Section 12 of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
17. Section 12(2) of FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.
18. In other words, if the cost of establishing whether information of the description specified in the request is held would be excessive, the public authority is not required to do so.
19. The appropriate limit is set in the Fees Regulations at £600 for central government, legislative bodies, and the armed forces and at £450 for all other public authorities. The applicable cost limit in this case is £450, which is equivalent to 18 hours of work.

¹ [ic-268461-j2y6.pdf \(ico.org.uk\)](#)

20. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence".
21. The task for the Commissioner here is to determine whether the cost estimate by the Museum was reasonable. If it was, then section 12(2) was engaged, and the Museum was not obliged to confirm or deny whether the requested information was held.
22. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in answering the request.

Would the cost of compliance exceed the appropriate limit?

23. The Museum explained to the Commissioner that for the request dated 7 June 2023, it would need to review information held in multiple locations in order to identify if any information within the scope of the request is held.
24. The Museum informed the Commissioner that it does not have a central system that can be searched and, due to this, different stakeholders store information in different locations (e.g. Fundraising information is kept in a separate location to Legal matters).
25. Due to this, in order to determine whether any information is held within the scope of the request staff would be required to individually go through the following:
 - Emails, meeting documents, digital documents and physical records held by members of its Advancement team/fundraising department. It confirmed that this would be required by two members of staff.
 - Emails and physical records held by management who have left their roles, including inboxes of the former Director of the Museum, the former Director of Resources and the former Head of Governance.
 - Emails, digital records and physical records of the Deputy Director (Operations) of the Museum.
 - Records held by its Directorate team, who offer administrative support to the Directors, Management Group and the Trustees (of which the Museum confirmed there are 4 members of staff).

- Any written notes during any meetings would need to be reviewed by all members of Management Group (approximately 30 members) to determine if any information fell into the scope of the request.
 - All physical records (i.e. held in notebooks) held by Trustees (approximately 20 Trustees) where information within the scope of the request may have been discussed during meetings.
26. The Museum advised that it conducted two separate sampling exercises for the purpose of this request both covering a period of two years. The first exercise was conducted by a member of staff who is not directly involved with the corporate support relationship, but may potentially hold information within the scope of the request.
 27. The staff used the following key words for their searches; "BP," "Benefits," "Contract extension," "Corporate Supporter" and "Discount. The Museum confirmed that using the search term "BP" 413 results were generated, using "Benefits" 267 results were generated, using "Contract Extension" 225 results were generated, using "Corporate supporter" 128 results were generated and using "Discount" 10 results were generated.
 28. The Museum estimated that it would take 30 seconds to open each record and establish whether it contained any information within the scope of the request. It concluded that this would amount to 8.7 hours of work for each member of staff who is not directly involved with the corporate supporter.
 29. The second sampling exercise was conducted by a member of staff who does work directly with the corporate supporter. They used the same search terms set out above. The Museum confirmed that this search identified the following: using "BP" 3,208 results were generated, using "Benefits" 4,014 results were generated, using "Contract Extension" 613 results were generated, using "Corporate supporter" 4,551 results were generated and using "Discount" 1,843 results were generated.
 30. As previously advised, the Museum stated it would take the member of staff 30 seconds to review each record, which would amount to 118.6 hours worth of work. As there are multiple members of staff who work are directly involved with the Corporate Supporter, this search would be required by multiple members of staff.
 31. The Museum acknowledged that some members of staff would likely retrieve more records during searches than others. For example, those not directly involved with the corporate supporter, but hold a senior position are estimated to hold a quarter of records compared to the members of staff who work with the corporate supporters.

32. The Museum advised that for these senior members of staff, it would only take 29.65 hours per person, to determine whether any information is held compared to the 118.6 hours estimated for the staff directly involved.
33. The Museum also recognised that it would take less to search any notebooks used during informal meetings. It explained that any significant notes would have likely been digitised and any other notebooks may have been discarded confidentially, in line with the Museum's record retention. The Museum advised that an estimated search would take 30 minutes per person.
34. The Museum explained to the Commissioner that when choosing some of the key terms it decided to use "Corporate Supporter" as this term used to describe organisations, such as BP, who sponsor the Museum. The term is the Museum's agreed term for the relationship and would be the term used in any emails, correspondences or files.
35. The Museum stated that "Benefits" was deemed appropriate as corporate supporters like BP receive benefits in exchange for partnership agreements. Any contractual agreement would permit BP to use their benefits and this word would likely be contained in any emails, correspondences or files.
36. Having reviewed all the reasoning for the key terms used, the Commissioner is satisfied that these terms are the most appropriate to locate any information within the scope of the request, if held.
37. The Commissioner accepts that the Museum has estimated reasonably and cogently that to confirm or deny whether it holds any information within the scope of the complainant's request would exceed the appropriate cost limit by a significant margin. The Museum was therefore correct to apply section 12(2) of FOIA to refuse the complainant's requests.

Section 16(1) – The duty to provide advice and assistance

38. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45

code of practice² in providing advice and assistance, it will have complied with section 16(1).

39. The Commissioner notes that in its internal review response the Museum explained to the complainant that when requesting information on a similar topic, the complainant or any other member working for/with Culture Unstained should make no more than two requests within a 60-day period. They also drew attention to the need to make any future requests more concise. The Commissioner is therefore satisfied that the Museum met its obligation under section 16 of FOIA.

² <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

40. 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

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

Michael Lea
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

Between 24 February 2023 and 7 June 2023, the complainant and members of the same organisation wrote to the British Museum and made four requests for information and one internal review request.

Although the first request is not subject to this complaint, it has been provided as context regarding a further request, which the Museum considered to be a new request for information. In this decision the Commissioner has determined the request should have been treated as a request for internal review.

The requests by the complainant and members apart of the same organisation, were made in the following terms:

24 February 2023 (the first request - not subject to this complaint)

"I am writing to you under the Freedom of Information Act 2000.

Please provide a copy of any current contract or formal agreement between BP and the British Museum, including any revisions or amendments to that agreement.

Please also provide a copy of any due diligence reporting that the Museum has undertaken on BP."

12 April 2023 (the request for internal review)

Thank you for your help. However, please could I ask you to clarify your response? I had asked, on 24 February 2022, for a copy of any current contract with BP.

The documents which you have provided do not appear to be relevant to this request, as they seem to relate to an expired contract.

I refer you specifically to page 47-48 of the attached appendix, the variation to the agreement, which in clause 2.1 b states: "'Term" means the period commencing on 1 January 2018 and terminating on the sooner of (i) the final date of the fifth BP Exhibition so designated under Clause 2.2 and (ii) 31 December 2023 unless ended earlier pursuant to Subclause 7.3.'

The appendix also includes five side-letters to the agreement, detailing each of the five BP exhibitions.

The fifth "provisionally called Decoding Egyptian hieroglyphs 1822 – 2022, due to take place from 15 September 2022 – 29 January 2023" in fact appears to have closed on 19 February 2023.

Therefore it appears that this is not a current contract and is not relevant to my request. Please could you confirm this is the case?

If it is a current contract, please could you help me understand why?

To avoid ambiguity, if there are any other current contracts with BP please provide all of these.

As this is a clarification of my previous request, I would be grateful if you could provide a response as soon as possible, rather than treating this as a new request."

11 May 2023 (the second request)

1. Details and copies of correspondence (such as electronic messages, emails, letters or notes arising from phone/conference calls) between representatives of the British Museum and staff from BP, which have taken place during the period January to March 2023.

2. Details and copies of any agendas, notes or related materials arising from meetings (whether in-person or electronic) which have:

- a) Taken place between representatives of the British Museum and staff from BP on any topic;
- b) Internal meetings which directly pertain to the status of the museum's relationship with BP.

The scope for (2) should also be limited to the period January to March 2023"

12 May 2023 (the third request)

"1. Has the BP sponsorship agreement in place since 2018, extended in 2020, now concluded?

2. Has a decision on renewing the BP sponsorship agreement, or agreeing a new or different kind of agreement with BP been taken?

3. The process undertaken for making that decision.

4. We understand that following the recent changes in Government, the Principal

Regulator for your Museum is now the Department for Culture, Media and Sport.

Please confirm if that is not correct."

7 June 2023 (the fourth request)

“(1) Please could you explain how this “verbal agreement” is compatible with the Contract documents you provided, for example, clause 13.1 “This Agreement [...] may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties” and also Section 16 on Notices, concerning ‘communications required or permitted to be given by or pursuant to this Agreement’?”

If the contract had been amended why were records of this not disclosed in response to my original request?

(2) Please could you provide what records do exist of this variation to the contract being proposed, and of an agreement being made. This should include the details of who [was] involved in agreeing it, when it was agreed, what was agreed and how it was recorded. I imagine relevant material could include, but may not be limited to: email records involving those with the authority to make the agreements or those who may have to implement it; records of telephone calls and notes from these calls; briefing papers or discussion documents; notes from internal meetings or from meetings with BP, and records on any corporate support data management systems.

(3) Please provide records of how this variation to the agreement was communicated internally in order for the supporter benefits to continue to be exercised.

(4) Please could you confirm if any other “verbal agreements,” or any other agreements not previously disclosed, exist between the Museum and BP; relating to

(a) this contract, its extension or renewal, or

(b) any potential new or different contracts between the Museum and BP”