

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 April 2024

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

Decision (including any steps ordered)

1. The complainant has requested copies of any current contracts or formal agreements between the British Museum (the Museum) and BP. The Museum provided a number of contracts it held, but specified that no further information was held.
2. The Commissioner's decision is that the Museum, on the balance of probabilities, does not any additional information within the scope of the request.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 24 February 2023, the complainant wrote to the Museum and requested information in the following terms:

"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."
5. The Museum responded on 27 March 2023. It provided some information within the scope of the request but advised the remaining information was exempt under section 40 and 43

6. The complainant wrote to the Museum on 12 April 2023, and requested an internal review. Despite the complainant's request clearly asking for clarification and showing dissatisfaction, the internal review request was treated as a new request for information.
7. The Museum provided a further response on 12 May 2023, it provided the complainant with some additional clarification, but advised that no additional information within the scope of the request was held.

Scope of the case

8. The complainant contacted the Commissioner on 3 November 2023, to complain about the way their request for information had been handled. The complainant explained that they were not satisfied with the information provided and that the information did not answer their request. The complainant confirmed that they were not raising any objections to the exemptions used.
9. Based on the above, the Commissioner considers that the scope of his investigation is to determine, on the balance of probabilities, whether the Museum holds any additional information within the scope of the request.

Reasons for decision

Section 1 – General right of access to information

10. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

11. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.

12. In other words, in order to determine such complaints, the Commissioner must decide whether it is more likely than not that the public authority has provided all the information it holds.

The Museum's position

13. The Museum informed the Commissioner that if any information was held it would be held by its Corporate Relations team. It confirmed that the Corporate Relations team has a case file on each of the Museum's corporate supporters. These files contain information about the Museum's respective relationships with each supporter. It would also be the main location for all recorded agreements and contracts.
14. The Museum advised the Commissioner that to locate the requested information, a search was undertaken by the Information Governance Team. The Information Governance team confirmed that all relevant agreements had previously been provided to it by the Corporate Relations team in response to a different request for information.
15. In response to this request, the Information Governance team conferred with the Museum's Corporate Relations team to ensure that all the relevant agreements and letters had been provided. Any additional information located was checked to see if it fell into the scope of the request.
16. The Corporate Relations team confirmed that the documentation held by Information Governance was up to date and there were no new agreements in place. The Head of Corporate Relations and Director of Advancement confirmed this by conducting a search on the files held within the principal BP case file.
17. The Museum stated that the records held in the BP case file were all in electronic form, as it stores each department's documents on Shared Drives labelled with each Corporate Supporter (e.g. BP). Each file would then contain folders (e.g. Agreements) where relevant information would be stored. The Museum stated all information within the scope of the request would be held in the BP case file and specifically the agreements folder. The Museum confirmed that no additional information within the scope of the request was located in the relevant folder.
18. In response to the request, the Museum advised the complainant and the Commissioner that one of the agreements disclosed continues to be in effect despite the agreement stating it would be terminated "on the sooner of (i) the final date of the fifth BP Exhibition so designated under Clause 2.2 and (ii) 31 December 2023...". The Museum explained that both parties verbally agreed that the corporate supporter may continue

to exercise their supporter benefits as part of the existing partnership until the end of this calendar year, due to the impact of the pandemic.

19. When queried by the Commissioner regarding how the museum was able to confirm that the agreement was extended verbally, it explained that there are two members of staff involved in its relationship with BP. The Museum spoke to both members of staff and both confirmed that the offer to extend the benefits to BP was made verbally.
20. The Museum confirmed that both members of staff also undertook a search of their emails. An email from BP was located, but this did not contain any information within the scope of the request. The email didn't confirm that the agreement had been extended and no other information within the scope of the request had been located during the email searches.
21. The Museum stated that upon receipt of the Commissioner's investigation letter, all documents were subsequently reviewed again, and the Director confirmed that no further information was held.
22. The Museum concluded that there is no statutory requirement on the Museum to record verbal agreements, as claims can continue to be brought under the Limitation Act 1980 on the basis of a verbal agreement. It also confirmed that there are no statutory requirements to record or retain this information.

The Commissioner's Decision

23. The Commissioner is satisfied that the Museum has conducted adequate searches to locate information within the scope of the request. He recognises that if any further information within the scope of the request is held, it would have been located in either the email checks conducted or within the electronic BP folder on Share Drives.
24. The Commissioner's role is to determine whether a public authority holds information, he is not expected to determine what information ought to be held because of the views of a complainant.
25. Having reviewed an unredacted copy of the follow up email from BP, the Commissioner is satisfied that the email does not contain any information which would fall into the scope of the request.
26. As the Museum has confirmed that these locations have been checked multiple times and that there is no statutory requirement on the Museum to hold a copy of the verbal agreement, the Commissioner is satisfied, on the balance of probabilities, that the Museum does not hold any additional information within the scope of the request.

Other matters

27. The Commissioner would like to take this opportunity to remind the Museum that any correspondence which only seeks to challenge the outcome of an initial response should be treated as a request for internal review. A complainant does not need to ask for an internal review explicitly.
28. In the circumstances of this case, the complainant asked the Museum to "clarify your response" and went on to state that "the documents which you have provided do not appear to be relevant to this request, as they seem to relate to an expired contract."
29. This correspondence from the complainant was clearly seeking to challenge the outcome of the Museum's response. It did not seek any information that would not have fallen within the scope of the original request – rather, it argued that more information was held than had been provided. The most appropriate action would have been to treat such correspondence as a request for an internal review and not as a new request for information.

Right of appeal

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

Website: 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.

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