

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 September 2023

Public Authority: The Royal Mint

Address: Llantrisant
Pontyclun
CF72 8YT

Decision (including any steps ordered)

1. The complainant has requested all correspondence between The Royal Mint and HM Treasury in relation to the development of an NFT (non-fungible token).
2. The Royal Mint initially withheld all the requested information, citing section 43(2) of FOIA, but later disclosed some information during the Commissioner's investigation.
3. The Commissioner's decision is that the withheld information engages section 43(2) and the public interest lies in maintaining the exemption. He notes, however, that some of the information was disclosed outside of the statutory time limit and accordingly The Royal Mint has breached section 10 of FOIA.
4. The Commissioner does not require the public authority to take any further steps.

Background

5. Non-fungible tokens (NFTs) are digital assets and can be associated with an image, art, music, or recording of a sports event.¹
6. The Government announced in April 2022 plans to make Britain a global hub for cryptoasset technology and investment. This included "working with The Royal Mint on a Non-Fungible Token (NFT) this summer."²
7. The Commissioner understands that the NFT would be a collectable digital artwork marketed to consumers as an extension of The Royal Mint's existing collectables coin range.³
8. On 27 March 2023, the Economic Secretary to the Treasury, Andrew Griffith, responded to a Parliamentary written question from Harriet Baldwin MP, stating that "In consultation with HM Treasury, The Royal Mint is not proceeding with the launch of a Non-Fungible Token at this time but will keep this proposal under review".
9. The Commissioner is also aware that this was reported in the media.⁴

¹<https://www.collinsdictionary.com/dictionary/english/nft#:~:text=non%2Dfungible%20token%3A%20a%20unique%20digital%20certificate%2C%20registered%20in%20a%20blockchain%2C%20that%20is%20used%20to%20record%20ownership%20of%20an%20asset%20such%20as%20an%20artwork%20or%20a%20collectible>

² <https://www.gov.uk/government/news/government-sets-out-plan-to-make-uk-a-global-cryptoasset-technology-hub>

³ <https://questions-statements.parliament.uk/written-questions/detail/2022-10-31/74594/>

⁴ <https://www.theguardian.com/technology/2023/mar/28/uk-government-nft-royal-mint-rishi-sunak-cryptocurrencies>

Request and response

10. On 15 December 2022 the complainant made the following request for information:

"1. All written correspondence between the Treasury and The Royal Mint relating to the project to create "an NFT for Digital Britain" between 1 January 2022 and today (15 December 2022).

2. All written correspondence between the Cabinet Office and The Royal Mint relating to the project to create "an NFT for Digital Britain" between 1 January 2022 and today (15 December 2022)."

11. The Royal Mint responded on 12 January 2023. In relation to part 1 of the request, it confirmed that this information was held but was exempt from disclosure by virtue of section 43(2) of FOIA. In relation to part 2 of the request, it confirmed that it did not hold the information.

12. The complainant requested an internal review on 8 March 2023 for reasons including: (a) the Mint has a turnover (2021-22) of £1.4bn, which does not rely on the creation of NFTs for revenue; (b) the Mint has no competitors, as a monopoly provider of currency; (c) the purpose of the NFT (as defined in a government statement) was not commercial but is to provide a service to the Government; (d) there is strong public interest in the government's involvement in the digital assets market, in which more than two million people invest.

13. On 11 April 2023 The Royal Mint provided its internal review response. It upheld its previous position and confirmed, in relation to part 1 of the request, that:

"the release of this information would be likely to prejudice the commercial interests of The Royal Mint... the Withheld Information relates to a potential new product, which, whilst it is not being launched at this time, remains something that we are keeping under review. The Withheld Information is focussed on the commercial aspects of the proposition such that its disclosure would be informative and advantageous to competitors... I would specifically highlight that no taxpayer money has been directly used to fund the project. The Royal Mint is a private limited company and operates as a commercial business. Any cost and resource associated with developing the project has been met entirely out of The Royal Mint's own revenues."

Scope of the case

14. The complainant contacted the Commissioner on 12 April 2023 to complain about the way that their request for information had been handled.
15. The complainant confirmed to the Commissioner that "I would be happy to exclude personal data from this request, except where the names of government ministers are used, as there would be a clear public interest in identifying the part played by elected officials in the process." In light of this, the Commissioner does not need to consider the application of section 40(2) FOIA (third party personal data) to the withheld information.
16. In addition, during the course of the Commissioner's investigation, The Royal Mint reviewed the information within scope of the request and:
 - a. advised the Commissioner that some small parts of the correspondence did not fall within the scope of the request as it related to other projects. The Commissioner accepts that this is the case and has not considered this information as part of his decision; and
 - b. disclosed some of the information on 15 August 2023, providing the complainant with copies of the documents, with third party personal data redacted.
17. During the course of his investigation, the Commissioner has had sight of the withheld information and considers that it can accurately be described as correspondence discussing the product structure for the NFT; product ranges; sales projections and prices; partner discussions and selection; options for artists and selection; designs; timings for launch; PR and communications strategy and regulatory analysis.
18. The Commissioner considers the scope of his investigation to be to determine if the residual withheld information engages section 43(2) FOIA and, if so, whether the public interest lies in maintaining the exemption or in disclosure.

Reasons for decision

Section 43(2) – commercial interests

19. Section 43(2) of FOIA states:

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."

20. The Commissioner's guidance 'Section 43 - Commercial interests'⁵ states that: "A commercial interest relates to a legal person's ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent."
21. In order for a prejudice based exemption such as section 43(2) to be engaged there must be a likelihood that disclosure would, or would be likely to, cause prejudice to the interest that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice based exemption:
 - 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; and,
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.
22. Consideration of the exemption at section 43(2) is a two-stage process: even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

The applicable interests

23. The Royal Mint has highlighted to the Commissioner the harm that it envisages disclosure would be likely to cause as follows:

"- it may (and in our view, will) be of significant commercial advantage to The Royal Mint's competitors; and

⁵ [Section 43 - Commercial interests | ICO](#)

- it would materially undermine the launch of the NFT product with The Royal Mint's competitive position being significantly eroded."

24. The complainant has argued in their internal review request that there is no commercial interest that could be harmed as the purpose of the NFT was not commercial but was to provide a service to the government. They said "There is therefore no commercial interest that could be harmed by disclosure."
25. To counter this point, The Royal Mint advised the Commissioner that it is a quasi-public, government-owned arms' length body, with HM Treasury being its sole shareholder. However, it further explained that it is providing its goods and services on a commercial basis, to maximise its (and ultimately HM Treasury's, by way of dividend) income. In its submissions it stated that, "it is, at its core, a private limited company and commercial enterprise (operating for profitability) in its own right."
26. The Commissioner is satisfied that, in the context of this request, the information does relate to a commercial interest. Therefore, the Commissioner is satisfied that the arguments presented by The Royal Mint outline how disclosure would be likely to prejudice the applicable interests within the relevant exemption.

The nature of the prejudice

27. The Commissioner must now consider if there is a causal link between the information that is being withheld and the prejudice that section 43(2) is designed to protect.
28. The complainant argued in their internal review request that no competitor to The Royal Mint exists, as it is a monopoly provider of currency. In addition they argued that the consequences of disclosure to the commercial interest would be insignificant in the context of Royal Mint's revenues.
29. The Royal Mint advised the Commissioner that "Whilst The Royal Mint is the exclusive supplier of UK issued circulating and commemorative coins, it operates in a highly competitive marketplace – both nationally and internationally. Despite this exclusivity for the UK Government, many coin manufacturers/ suppliers, normally through legal tender for overseas issuing authorities, sell directly (and some solely) to UK customers."
30. The Royal Mint's submissions explained that The Royal Mint has set about a strategy of reinvention in the last three years, to counter the decline in cash. It advised the Commissioner that its currency division is currently loss-making and shrinking and this is unlikely to change in the future. The Royal Mint state that it has therefore been successful in building a portfolio of businesses together with new ventures, to sit

alongside its core currency business. It says that "This commitment to reinvention has transformed the business and safeguarded its future". To this end, The Royal Mint advised the Commissioner that "the proposed launch of an NFT is very much in keeping with this new commercial strategic direction."

31. The Royal Mint has also explained that it is acting in a highly competitive market for the provision of goods and services to others. Its competitors are many and varied and hence, the complainant's view that The Royal Mint has no competitors is incorrect. It stated:

"The Royal Mint has by no means a monopoly on the sale of commemorative coins in the UK. There are many other players in the market, some of which (e.g., 288 Group Limited; The Commonwealth Mint) will have a licence to manufacture and sell commemorative coins in the UK on behalf of British Overseas Territories. These coins will commemorate many of the same themes and events as UK coins and will also carry the reigning Monarch's effigy on the obverse."

32. In addition, The Royal Mint argue that it is not just other coin manufacturers that are competitors. The Royal Mint explain that their competitors "could extend to any business which operates in the collectibles space and might be interested in launching a NFT."

33. In terms of competitors, its submissions explain that while The Royal Mint does acknowledge that it benefits from its public sector standing, it is also liable to some pitfalls as a result of it. Its submissions state that its private sector competitors are not likely to be required to disclose via an FOI request their own commercial and sensitive business details. The Royal Mint state that "It would be very easy for one of our competitors here to try and launch their own competing NFT product and it would be grossly unfair to The Royal Mint if they were afforded free access to the withheld information which could naturally happen if The Royal Mint were compelled to release it".

34. The Royal Mint explained that like all commercial enterprises, its aim is to generate profit. The Royal Mint is concerned that, to do so, it must stay a step ahead of its competitors. Although The Royal Mint is a wholly government-owned organisation, any commercial damage to it would, in turn, be mirrored for its sole beneficial owner, HM Treasury – financed by the taxpayer. The release of this information into the public domain would, in the Commissioner's view, be of interest to The Royal Mint's competitors and therefore would be likely to be prejudicial to its commercial interests.

The likelihood of prejudice occurring

35. It is important to identify which threshold of prejudice is being relied upon when applying a qualified exemption such as section 43. The

higher threshold, disclosure 'would' prejudice, will hold more weight when considering where the public interest lies than the lower threshold, disclosure 'would be likely' to prejudice.

36. The Royal Mint has explained "there is a real and significant risk of such prejudice occurring – and certainly one which is more than hypothetical/remote." Disclosure of the withheld information would, it states, significantly affect the ability of The Royal Mint to do business in the highly competitive collectables market.
37. The Royal Mint has confirmed it is relying on the lower threshold of prejudice in this instance; disclosure would be likely to harm its commercial interests.

Is the exemption engaged?

38. In this instance the Commissioner is satisfied that the three part test referred to above has been met. The Royal Mint has been able to demonstrate a causal relationship between the disclosure of the requested information and prejudice to its own commercial interests. The Commissioner is also satisfied that there is a real and significant risk of the prejudice occurring, even though the chance of the prejudice occurring is less than 50%. The Commissioner also considers that the consequences of disclosure are not trivial or insignificant.
39. The Commissioner will now go onto consider the balance of the public interest test. The information must be disclosed unless the public in maintaining the exemption outweighs that of disclosure.

Public interest test

Public interest arguments in favour of disclosure

40. There is a general public interest in promoting transparency, accountability, public understanding and involvement in the democratic process. FOIA is a means of helping to meet that public interest.
41. The Royal Mint has identified in its submissions to the Commissioner some generic public interest arguments in favour of disclosure. It notes that there is always a public interest in a public authority demonstrating transparency and accountability and it states that to this end: "our annual reports ... are famously comprehensive, and contain much public

interest details on our products and services – see, for example, our 2020/21 edition and our 2021/22 edition.⁶

42. The complainant's request for internal review highlighted that there is strong public interest in the government's involvement in the digital assets market, in which more than two million people invest. In particular, they highlighted that "There is a very strong public interest in full disclosure of information around the creation of a digital asset by a body wholly owned by the UK government, with the express aim of reinforcing confidence in the UK's commitment to that market."

Public interest arguments in favour of maintaining the exemption

43. In its submissions to the Commissioner, as already set out above, The Royal Mint explained that The Royal Mint "is a private limited company and commercial enterprise (operating for profitability) in its own right."
44. The Royal Mint has therefore explained that "transparency and accountability is not the main factor at play here, but rather the need to maintain and generate The Royal Mint's income in the highly pressurised financial circumstances that currently face it and HM Treasury." To do so, it argues it cannot provide its competitors with commercially sensitive information which is not generally known, and which would lessen its competitive advantage.
45. The Royal Mint referenced ICO guidance on section 43 that supports its position and noted that there is a public interest in allowing public authorities to withhold information which, if disclosed, would negatively affect their ability to negotiate or to compete in a commercial environment. It referred to a Tribunal case quoted in ICO guidance, *Willem Visser v Information Commissioner* EA/2011/0188, (1 March 2012),⁷ which stated that:

"If the commercial secrets of one of the players in the market were revealed then its competitive position would be eroded and the whole

⁶ https://www.royalmint.com/globalassets/_rebrand/_structure/about-us/annual-reports/reports/2020_21-royal_mint_limited_annual_report-p1-web.pdf

⁷ <https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i691/20120822%20Decisions%20combined%20EA20110188.pdf>

market would be less competitive, with the result that the public benefit of having an efficient competitive market would be to some extent eroded.”

46. The Royal Mint also referred to another Tribunal case quoted in ICO guidance, *Council of the Borough and County of the Town of Poole v IC EA/2016/0074*, (13 September 2016),⁸ to emphasis the point that it is part of the role and duties of some public authorities, like The Royal Mint, to generate income and to do so it acts in the competitive market for the provision of services to others. The commercial interests identified are therefore those of The Royal Mint itself, acting in a competitive market with the purpose of maximising its income. It is not always in the public interest to place information which explains how a public authority generates income into the public domain if doing so could provide competitors with commercially sensitive information which may lessen any competitive advantage.
47. In this case the Royal Mint have also relied for support and comparison on two previous decisions of the Commissioner, concerning The Royal Mint, issued in 2015 and 2019 respectively.
48. In the 2015 case (FS50558253⁹), the request was for information from The Royal Mint about UK and overseas retail trade sales of commemorative coins. In the 2019 case (FS50804925¹⁰), the request to was for the cost of producing 1p and 2p coins in each of the last five financial years. In both these cases, The Royal Mint argued that the withheld information would be of significant commercial advantage to both its competitors and/or its customers and, while the facts are different, the Commissioner concluded, based on similar arguments to those put forward by The Royal Mint in this case, that the requested information was exempt from disclosure on the basis of section 43(2).

⁸<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1889/Council%20of%20the%20Borough%20and%20County%20of%20the%20Town%20of%20Poole%20%20EA-2016-0074.pdf>

⁹ https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1424162/fs_50558253.pdf

¹⁰ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615028/fs50804925.pdf>

49. In addition, the Commissioner notes that Royal Mint has also explained that, “no taxpayer money has been directly used to fund the [NFT] project. Any cost and resource associated with developing the project has been met entirely out of The Royal Mint’s own revenues”.

The balance of the public interest

50. The Commissioner believes that on balance the public interest lies in maintaining the exemption in this instance.
51. The Commissioner considers (as The Royal Mint has recognised and accepted) that there is a public interest in disclosure of the information and that openness in government may increase public trust in, and engagement with the government. He also accepts that the public interest in transparency around issues concerning the government's involvement in the digital assets market and in transparency as regards the arrangements made by the government to issue NFTs. To this end, there is already information in the public domain regarding the government’s approach to NFTs, cryptocurrency and other emerging technologies, including a consultation response published by the government in January 2022 and a statement on the government’s approach to crypto asset financial promotions regulation policy in March 2023.
52. Balanced against this is the public interest in protecting The Royal Mint’s ability to develop new products such as NFTs, without fear of publication of the information to its competitors.
53. As the Upper Tribunal recently confirmed in *Montague v The Information Commissioner and The Department of Trade (UA – 2020- 000324 & UA[1]2020-000325) [13 April 2022]*¹¹, the time for judging the competing public interests in a request is the time when the public authority should have given a response in accordance with the timeframe required by FOIA. Therefore, the appropriate time in this case is 12 January 2023 (i.e., 20 working days after the complainant’s request of 15 December 2022).
54. At the time of The Royal Mint’s response to the request the Commissioner understands that, while the NFT launch date had been put on hold, the idea to issue those NFTs remained live and ongoing. Although it was later announced that the NFT scheme with Royal Mint

¹¹ <https://www.gov.uk/administrative-appeals-tribunal-decisions/montague-v-the-information-commissioner-and-department-for-international-trade-2022-ukut-104-aac>

was not being taken forward on 27 March 2023, HM Treasury is keeping this policy proposal under review. There is little weight therefore in any argument that the information has become less topical or sensitive and the likelihood or severity of the prejudice had diminished. In addition, the public interest favours protecting the integrity of the withheld information should the project be revived in the future.

55. The Commissioner accepts that the cases of *Visser* and *Poole*, cited by The Royal Mint, are persuasive in this case. In these cases, transparency and accountability were not the main factors at issue, but rather the need for the public authority to maintain income and competitive advantage in highly pressurised financial circumstances. Release of the withheld information is likely to have had a prejudicial effect on the Royal Mint's ability to remain competitive, in relation to future NFTs. The Royal Mint sees this as a very real threat. This would not be in the public interest.
56. The Commissioner notes that in previous decision notices cited by The Royal Mint, he has upheld the section 43(2) exemption. The Royal Mint strongly argued that the reasoning in those cases was transferable to this current case. The Commissioner is persuaded that this is the case. The Commissioner agrees with a statement he made in his decision notice FS50558253 that:

"Royal Mint must be able to operate in an environment which allows it to generate its own funding. In these circumstances, the weighting afforded to accountability and transparency must be offset against allowing The Royal Mint to conduct its business effectively".
57. He also notes that in a more recent 2022 Royal Mint decision notice (IC-111535-G9Z5¹²) involving a request for information about a specific coin, the Commissioner also agreed that The Royal Mint is ultimately a commercial enterprise and that its commercial interest and by extension HM Treasury's, commercial interests, need to be protected.
58. The Commissioner has regard to the specific content of the requested information in this case, and he appreciates that the complainant cannot have sight of it in order to make submissions. The Commissioner considers that the requested information does not contain substantive detail about the government's involvement in the digital assets market

¹² <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022024/ic-111535-g9z5.pdf>

or its views about NFTs. It is largely focused on the product range and design of the NFT, and for this reason the Commissioner finds that its disclosure would not inform the public to any significant degree regarding the government's approach to NFTs and cryptocurrency.

59. Despite the Commissioner recognising the argument for transparency, the Commissioner considers that The Royal Mint has advanced clear and persuasive arguments in favour of maintaining the exemption cited at the time of the request and that there is public interest in The Royal Mint being able to develop new products such as NFTs, without fear of publication of the information to its competitors. The Commissioner also considers it weighty that no taxpayer money has been directly used by The Royal Mint to fund the NFT project
60. The Commissioner recognises that the complainant in this case has advanced arguments that the development of NFTs by the government was a matter of important and legitimate public interest. However, having had sight of the withheld information, the Commissioner considers that the public interest weight and value of the withheld information is outweighed by the stronger and wider public interest in the commercial sensitivities of the information to support The Royal Mint in its aim of generating a profit.
61. The Royal Mint may be wholly government-owned organisation but it is ultimately a commercial enterprise. The complainant's eagerness to find out more about The Royal Mint's involvement in the development of NFTs does not outweigh the need to protect The Royal Mint's, and by extension HM Treasury's, commercial interests.
62. In conclusion the Commissioner is satisfied that section 43(2) applies to the residual withheld information and therefore The Royal Mint was not required to disclose the residual withheld information to the complainant.

Procedural matters

63. Section 10 of FOIA requires a public authority to disclosure non-exempt information within 20 working days of receiving a request.
64. During the Commissioner's investigation The Royal Mint released some limited information to the complainant relating to issued press releases, parliamentary questions, media requests and FOI requests. Therefore it breached sections 1 and 10 of FOIA as this disclosure was outside the statutory timeframe.

Other matters

65. The Royal Mint originally adopted a blanket approach to this request and withheld all of the information within scope under section 43(2). The Commissioner would impress upon The Royal Mint the importance of not adopting a blanket approach to the application of exemptions. Such a position was not tenable and likely to lead to a complaint to the Commissioner. However, the Commissioner would commend The Royal Mint for their willingness to reappraise the withheld information during his investigation, and for their voluntary disclosures of some of the information within scope to the complainant.

Right of appeal

66. 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: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

67. 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.
68. 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

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