

Freedom of Information requests

2012

Reference number: 12-008

Freedom of Information Request. Keith Arnatt

Please provide, pursuant to section 1 of the Freedom of Information Act 2000, to the address above and by email to matthew.arnatt@tiscali.co.uk the information requested below about works by Keith Arnatt that National Museum of Wales recently acquired -

Keith Arnatt, *The Visitors*, 1974-76
46 silver gelatin prints, Sheet size 506mm x 406mm, image size 343mm x 305mm, NMW A 29605 - 29650. Acquired from the artist by a private individual in 1976. Acquired by Richard Saltoun, London from the purchaser above in 2009. Acquired by National Museum Wales from Richard Saltoun, London 2010

I would of course be prepared to pay the reasonable costs of compliance with the request.

I set out below the information required and reasons for making the request.

Please provide copies of the following:

1. Any information the museum has in connection with the original acquisition in 1976; including the identity of the purchaser at that time and any information that you hold relating to the process of the acquisition including the terms of and value of any purchase.
2. Please include any information that you have regarding the works'/prints' histories between the dates of the original acquisition and your acquisition of these prints in 2010.

This information would substantially affect understanding of the history and background of these works insofar as these works or prints were intended as a group, acquired as a group, or were collected together at some later date or just purchased together without the knowledge of Keith Arnatt. This information is fundamental to understanding the history of the prints, to establishing their authenticity and to establishing the artist's original intentions so far as grouping prints in series was concerned.

I look forward to hearing from you.

9 May 2012

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Dear,

REQUEST FOR INFORMATION – *regarding with the original acquisition of the works by Keith Arnatt.*

Thank you for your request for information. As Head of Knowledge and Information Management for Amgueddfa Cymru - National Museum Wales, I am responsible for responding to your request for information.

I refer to your email of the 11 April 2012, in which you asked for the following information:

<i>Request 1</i>	<i>Any information the museum has in connection with the original acquisition in 1976, including the identity of the purchaser at that time and any information that you hold relating to the process of the acquisition including the terms of and value of any purchase.</i>
<i>Request 2</i>	<i>Please include any information that you have regarding the work's / prints' histories between the dates of the original acquisition and your acquisition of these prints in 2010</i>

In responding to your email, I will address each element of your request separately.

Request 1

As part of the Museum's acquisition process, it is standard procedure to undertake due diligence in respect of the ownership of all specimens, works of art and objects being acquired by the Museum. This is to ensure we only purchase items where there is clear legal title to do so. In some cases,

information is provided in confidence with the understanding that such information is only used to ensure an authentic line of ownership can be established. It is also a valuable tool used by the Museum for the detection and prevention of crime.

Amgueddfa Cymru – National Museum Wales acquired a group of 46 prints of Keith Arnatt's *The Visitors* from Richard Saltoun in 2010. It is standard procedure to complete the due diligence procedure prior to such purchases, therefore, we requested the vendor to provide full details of the provenance for the group of prints. Mr. Saltoun did provide the information and we were satisfied that he was in the position to sell the prints. I have reviewed the due diligence information and I have taken the view that this information amounts to personal information and information used in the detection and prevention of crime.

The information you have requested was firstly considered under the Freedom of Information Act is exempt from disclosure under Sections 40(2) and 31(1)(a) of the Act.

SECTION 40(2)

Section 40 (2) FOIA – Personal data exempt from disclosure

The information requested amounts to personal data and is exempt under section 40(2), FOIA, as disclosure, without the consent of the individuals to whom it relates, to a member of the public otherwise than under the FOIA would breach the first data protection principles. This exemption is absolute and is not subject to the public interest test. Therefore, the information requested is exempt under FOIA section 40(2) and will now be reviewed under the Data Protection Act 1998 (DPA).

Data Protection Act 1998 (DPA)

Section 1(1) DPA – meaning of “personal data”

Information relating to the identity of the purchaser in 1976 is personal data within the meaning of the DPA.

Part I of Schedule 1 DPA – first data protection principle

In our view, the disclosure of personal data to a third party would be unfair within the meaning of the first data protection principle. Part II of Schedule 1 to the DPA sets out how the principle of fairness is to be interpreted. It states that, in deciding whether personal data is processed fairly, regard must be had to whether any person from whom it was obtained is deceived or misled as to the purpose or purposes for which they are to be processed. In this case, the identity of the purchaser in 1976 was provided for the sole purpose of completing the due diligence process and for this reason, the principle of fairness,

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disclosure of the personal information would be unfair as the individual only provided the information for that purpose and not for public publication and for that reason the information is being withheld.

The information he provided is considered personal information under the Data Protection Act 1998, it was processed in a fair and lawful manner and used for the detection and prevention of crime. It was not processed for any other purpose such as for public publication.

The Information Commissioner's Legal Guidance on the Data Protection Act (available on-line at www.informationcommissioner.gov.uk) advises that the Commissioner takes a strict view of the concept of compatibility. The Commissioner also cross-refers to the DPA's interpretative provisions on the meaning of fairness, as set out in relation to the first data protection principle above. The DPA says that, in determining whether personal data is processed fairly, regard is to be had to whether the data subject has been deceived or misled as to the purposes for which their personal data is to be processed. The Commissioner says that this is material in considering whether further processing is incompatible with the specified purposes.

In addition to the information being exempt under Section 40(2) of the Freedom of Information Act, I am also applying Section 31(1)(a).

SECTION 31

Section 31 – Law enforcement of the *Freedom of Information Act 2000*

This exemption is applicable where releasing information would or would be likely to prejudice the prevention or detection of crime.

In this case it is felt that disclosure of this information would undermine effective law enforcement by jeopardising security matters and therefore, Section 31(1)(a) has been engaged.

Section 31 - Law Enforcement is a qualified prejudice-based exemption and, as such, I am required to apply both the harm test (prejudice) and the public interest test. These are outlined below.

Harm in Disclosure

Releasing into the public domain information relating to the names of individuals recorded during the due diligence procedure procurement could be of interest and use to criminal elements. This could help in their planning and execution of criminal acts, which could put private individuals at risk.

Public Interest Considerations

Factors Favouring Disclosure

Disclosure would provide a better awareness of the acquisition process.

Factors Favouring Non-Disclosure

Amgueddfa Cymru – National Museum Wales is responsible for ensuring appropriate measures are in place to ensure the acquisition of items into the collection is fair and lawful and for the detection and prevention of crime, while protecting the Museum's staff and private individuals. As outlined within the harm disclosure would undermine and compromise current and future prevention of detection of crime and potentially result in crime being committed and could hamper full disclosure of information by individuals during the due diligence process.

Balancing Test

It is acknowledged that such information is of interest to the public, however compromising the safety private individuals would not be in the public interest. Effective detection and prevention of crime is of paramount importance and therefore, it is our opinion that the balancing test favours non-disclosure.

That being the case, I must inform you, in accordance with Sections 40(2) and 31(1)(a) of the Freedom of information Act 2000, the information you have requested is personal information and is exempt from disclosure. Amgueddfa Cymru – National Museum Wales is unable to provide this information, I must therefore provide you with a Refusal Notice under Section 17.1 of the Freedom of Information Act 2000.

Request 2

Your second request relates to information regarding the works' / prints' histories between the dates of the original acquisition and the Museum acquiring the prints in 2010. The only information held by the Museum relates to the due diligence process and as stated under Section 1, the information amounts to personal information and there for can not be released as previously noted.

I have reviewed the Museum's information holdings and I have not found any further information relating to your second request, therefore I am unable to provide you with the information you require as the information is not held. That being the case, I would inform you, in accordance with Section 1.1(a) of the Freedom of information Act 2000, the information you seek is not held by Amgueddfa Cymru. To the extent that we are/Amgueddfa Cymru is unable to provide information that fully responds to your request, I must therefore

Amgueddfa Cymru – National Museum Wales
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provide you with a Refusal Notice under Section 17.1 of the Freedom of Information Act 2000, because in accordance with Section 1.1 of the Act, the information you have requested is not held

Your request was considered according to the principles set out in the National Assembly's Code of Practice on Public Access to Information (third edition). The Code is published on the Internet at www.information.wales.gov.uk.

If you believe that I have not applied the Code of Practice on Public Access to Information correctly or have not followed the relevant laws, please contact me to request a first-stage review. If, after that, you are still not satisfied you may request a formal review by the Museum. When dealing with any concerns, we will follow the principles of the National Museum of Wales' Code of Practice on Complaints, which is available on the Internet at www.nationalmuseumwales.org/en/45/ or by post to:

Mr. John Williams-Davies
Director of Collections & Research
National Museum Wales
Cathays Park
Cardiff
CF10 3NP

You also have the right to complain to the Information Commissioner. Normally, however, you should pursue the matter through our internal procedure before you complain to the Information Commissioner. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Yours sincerely,

Head of Knowledge & Information Management

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