

16 May 2016

FOI 16-008

REQUEST FOR INFORMATION – Information relating Agreement made with PCS through ACAS

Thank you for your request for information. As Museum Secretary for Amgueddfa Cymru - National Museum Wales, I am responsible for responding to your request for information.

I refer to your email of 15 April 2016 in which you asked for the following information:

Can you please send me a copy of the agreement you made with PCS through ACAS.

RESPONSE

I confirm the Museum does hold the information you have requested. However, the Museum is not obliged to supply this information due to the information being exempt under the Freedom of Information Act 2000. Therefore, in accordance with the Act, this letter acts as a Refusal Notice.

The exemptions applicable are:

Section 36(2) – Prejudice to the effective conduct of public affairs. The Museum's Qualified Person is David Anderson as Accounting Officer, and Director General. He has provided his reasonable opinion on this qualified exemption (Appendix 1)

There are two sections that apply:

Section 36(2)(c) It is the reasonable opinion of the Qualified Person that disclosure of the information under this Act would otherwise prejudice, or would be likely to otherwise prejudice, the effective conduct of public affairs. In particular, the Museum refers to the need to have a 'safe space' in which to debate live issues, and reach decisions away from external interference and distraction.

In addition, the Museum would be reluctant to enter into mediation in order to attempt to resolve disputes if documentation produced as part of a confidential mediation process had to be disclosed under the Act. This would limit the options available to the Museum and other public authorities in terms of alternative dispute resolution and in turn would, or would be likely to, prejudice the effective conduct of public affairs.

Section 36(2)(b)(ii) It is the reasonable opinion of the Qualified Person that disclosure of the information under the Act would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation. In particular the Museum relies on the chilling effect that disclosure of such information would produce.

Section 41 – Confidential Information

The agreement you refer to formed part of a confidential mediation process offered by and conducted by ACAS. ACAS made it clear to all parties that the process is a confidential process and the information available on the ACAS website relating to the mediation process confirms that this is a confidential process. Confidentiality is a cornerstone of the mediation service provided by ACAS and it is considered that this extends not only to the negotiation but to any agreements reached as part of the confidential process.

Section 43(2) – Commercial Interest

This exempts the disclosure of information that would be likely to prejudice commercial interests.

The mediation process offered by ACAS is a service which generates revenue for ACAS. This exemption applies because the disclosure of the agreement reached through a process that ACAS asserts as being confidential, could jeopardise ACAS' ability to offer a confidential mediation process and in turn could therefore damage ACAS's commercial interests.

Furthermore, the Museum is currently undergoing individual discussions with staff affected by the issue of premium payments in an effort to reach individual agreement. Provision of the document requested, particularly at such a sensitive time, would be likely to prejudice the commercial interests of the Museum.

Although S.36 and 43 are subject to the public interest test, to which we have given careful consideration, we have decided that in all the circumstances of the case, the public interest in maintaining the exemptions outweighs the public interest in disclosing the information.

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 Amgueddfa Cymru. When dealing with any concerns, we will follow the principles of the National Museum of Wales's Code of Practice on Complaints, which is available on our website at http://www.museumwales.ac.uk/freedom_of_information/publications_scheme/ or by post from:

Mr. Neil Wicks
Director of Finance and Corporate Resources
Amgueddfa Cymru – 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

I apologise that Amgueddfa Cymru cannot assist you with your request but if you have any further queries or concerns then please contact me via my email address.

Yours sincerely

Elaine Cabuts
Museum Secretary