

From: Kate Davenport
To: [REDACTED] Information, Freedom of
Date: 16/06/2009 15:47:51
Subject: Re: Fwd: Freedom of Information request

I'm sure we don't have to disclose anything which is covered by a confidentiality agreement - but do check with Legal.

Kate

>>> [REDACTED] 16/06/2009 14:26:07 >>>

[REDACTED]
I will ask [REDACTED] to supply you with a comment re information [REDACTED] ensure You cc people into reply plse)- but contractually there is a good deal of sensitivity as you would imagine and we have signed a tight contract which includes not disclosing information, can we take legal advice?
We need to be very careful with this, I should imagine this is just the first of many journalists trying to obtain information.
best
[REDACTED]

>>> Freedom of Information 16/06/2009 14:17 >>>

[REDACTED]
We have received the request below, which we must respond to.
However I am happy to point out to the requester that they are entitled to request "information" and not documents specifically. I will instead ask them to confirm exactly what "information" they require.
Before I do so, please can you give me an indication of what type of information and correspondence you do / do not hold?

Thanks,
[REDACTED]

>>> [REDACTED]@theartnewspaper.com> 12 June 2009 13:26 >>>

I am submitting a request under the Freedom of Information Act for all internal and external correspondence relating to the "Banksy vs Bristol Museum" held by Bristol City Council including emails, letters, memos etc.

thank you.

[REDACTED]
[REDACTED]
[REDACTED]

The Art Newspaper
The Sunday Times

CC: [REDACTED], Caplan, Simon; [REDACTED]
(Museum)

From: [REDACTED]
To: [REDACTED] McNamara, Stephen
Date: 22/06/2009 11:14:17
Subject: Fwd: Agreement for Deed

Please find attached the confidentiality agreement.

There is also an exhibition agreement, which I will send to you separately once I have received the final version from the client (apparently there were some small amendments to the latest version that I currently hold), although this agreement is not really relevant here.

The relevant clause in the confidentiality agreement is clause 6. This requires us to notify the Company of any disclosure required by law and of all relevant surrounding circumstances.

Also, we are only under an obligation to use 'reasonable endeavours' to resist the disclosure, rather than 'best endeavours' as the Company are apparently claiming, the former being a level of obligation that does not require us to sacrifice our own interests (as opposed to the latter, which might).

Please let me know if there's anything else you need me to do.

Kind regards

[REDACTED]

From: [REDACTED]
To: [REDACTED]
Date: 22/06/09 13:05:11
Subject: Re: Fwd: Freedom of Information Request

Hi [REDACTED]

There is a rule against perpetuities in the context of trusts, but this something separate to ongoing contractual obligations (e.g. continuing effect clauses), which are permitted.

There's something on PLC (search under "Termination and in perpetuity terms") from a case in 2000 that confirms the above, and to my knowledge nothing has changed this position.

[REDACTED]

>>> [REDACTED] 22/06/2009 12:46 >>>
 Question - are contracts in perpetuity now allowed in law?

[REDACTED]

>>> [REDACTED] 22/06/2009 12:34 >>>
 Attached

>>> [REDACTED] 22/06/2009 12:10 >>>
 [REDACTED]
 have you seen the ones that the individual staff members were asked to sign?
 Thanks,
 [REDACTED]

>>> [REDACTED] 22/06/2009 11:17 >>>
 FYI

From: Kate Brindley
To: [REDACTED]
Date: 22/06/09 09:53:57
Subject: Fwd: Freedom of Information Request

FYI

>>> [REDACTED] 17/06/2009 16:10 >>>

Hi Kate:

[REDACTED]

Please could you all co-operate with us by taking your time to answer such requests based on the mountain of work which surrounds us all. I will be having a meeting with our lawyer this week to decide how we proceed until which time we would be very grateful if you could stay schtum.

Kindest Regards

[REDACTED]

This e-mail is confidential and is intended only for the addressee(s) named above. If you have received this message in error please notify the originator immediately by a short reply to this email. The unauthorised use, disclosure, copying or alteration of this message is strictly forbidden.

[REDACTED]

CC: Kate Davenport

From: [REDACTED]
To: [REDACTED]
Date: 02/06/09 09:50:03
Subject: Agreement for Deed

Dear [REDACTED]

Please find the agreement to be made into a Deed attached as discussed.

We would like to get this completed today - so if at all possible we would really like to have this in order to be taken to London for signing this afternoon.

Please can you confirm if this is possible for us to have by eg. 12.30pm?

Thanks

[REDACTED]

From: [REDACTED]
To: [REDACTED] (Museum)
Date: 22/06/09 10:04:01
Subject: Final Version of the Exhibition Contract

[REDACTED]

Please could you send me a copy of the final version of the exhibition contract (I believe there were some final amendments that you made following our discussions). We need this to consider our obligations to [REDACTED] in dealing with the Freedom of Information request.

Thanks

[REDACTED]

From: [REDACTED]
To: [REDACTED]
Date: 18/06/09 15:26:16
Subject: Retention of file - Lexcel

Hi [REDACTED]

The retention and destruction of files is covered at section 13 of the Lexcel manual (along with an accompanying table of minimum retention periods).

Para 13.3 states that **consideration** must be given to the table of minimum retention periods - suggesting that there is some flexibility.

[REDACTED]

DATED

2009

[REDACTED]

- and -

Bristol City Council (2)

AGREEMENT FOR THE EXHIBITION:

Title of exhibition

AN AGREEMENT made this day of 2009

PARTIES:

- (1) a company registered in England [REDACTED] and
- (2) **BRISTOL CITY COUNCIL** of College Green, Bristol, BS1 5TR ("the Museum" as further defined below)

BACKGROUND

- A. The Museum wishes to host the Exhibition (as defined below) on the terms of this Agreement.
- B. [REDACTED] acts as the Artist's management and has agreed to procure the services of the Artist in connection with the Exhibition.
- C. The Museum and the [REDACTED] have entered a separate agreement regarding the confidentiality of, amongst other things, the Exhibition and Artist ("**Confidentiality Agreement**").

IT IS AGREED as follows:

1. 1 **INTERPRETATION** \ 1 **Interpretation**

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

[REDACTED] Project Manager: [REDACTED] manager for the Exhibition, who shall be [REDACTED] or such other person as [REDACTED] shall nominate in accordance with clause 2.3.

Artist: the artist known as ARTISTS NAME

Budget: the Museum's budget for the Exhibition as set out at Annex 5 to this Agreement.

Close: the point at which the Exhibition is closed finally to the public.

Confidentiality Agreement: has the meaning given to it in background clause (C).

Dispute: has the meaning given to it in clause 20.1.

Eligible Costs: has the meaning given to it in clause 5.2.

Exhibits: all materials developed by [REDACTED] or the Artist for display in the Exhibition in any media, including, without limitation paintings and sculptures and art installations using combinations of media and technologies.

Exhibition: the exhibition of works by the Artist provisionally entitled "X" as described in the Project Plan.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, database rights, moral rights, rights in confidential information (including know-how and trade secrets)

and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

_____ means _____ appointed public relations agency.

Legal Requirements: means the requirements of:

- (a) any statute or proclamation or any delegated or subordinate legislation;
- (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
- (c) any guidance, direction or determination with which the parties are bound to; and
- (d) any judgment of a relevant court of law which is a binding precedent in England;

Museum: shall mean Bristol City Council, which for the avoidance of doubt includes Bristol's City Museum & Art Gallery. Any reference to the Museum's premises or the venue in which the exhibition will take place shall be Bristol's City Museum and Art Gallery, Queens Road, West End, Bristol BS8 1RL. The Bristol's City Museum and Art Gallery and its staff are representatives of Bristol City Council and as such act on behalf of Bristol City Council and in accordance with its procedures.

Museum's Project Manager: the Museum's manager for the Exhibition appointed in accordance with clause 3.1(a).

Opening: the opening to the public of the Exhibition.

Press Call: a viewing of the Exhibition by accredited and invited members of the media, with a briefing by _____ between 6am and 2pm on DATE (or such other date as may be agreed in writing between the parties).

Private View: a viewing of the Exhibition by invited guests prior to the Opening, which shall comprise of three sessions on DATE (or such other date as may be agreed in writing between the parties) as follows: (i) First session 4pm to 4.30pm; (ii) Second session 4.30pm to 6.30pm; (iii) Third session 7.30pm to 10.30pm.

Project Milestone: a date by which the Exhibition is estimated to be installed, open and dismantle (as the case may be), as set out in the Project Plan.

Project Plan: the detailed plan describing the Exhibition and setting out the estimated timetable (including Project Milestones) for the Exhibition.

Services: the services to be provided by _____ (or the Artist) under this Agreement.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Headings do not affect the interpretation of this Agreement.

1.3 References to any statute or statutory provision shall be deemed to refer to those provisions as replaced, amended, extended, or re-enacted from time to time whether by statute or by directive or regulation (which is, in the case of directive or regulation, intended to have direct application within the United Kingdom and has been adopted by the Council of the European Communities) and all statutory instruments or orders made pursuant to it.

2. 2 [REDACTED] OBLIGATIONS" I 1 [REDACTED] obligations
- 2.1 [REDACTED] shall use reasonable endeavours to manage the installation of the Exhibition and to procure the delivery of the Exhibits to and from the Museum, in accordance in all material respects with the Project Plan.
- 2.2 [REDACTED] shall meet the performance dates specified in the Project Plan for installation and dismantling of the Exhibition, as time shall be of the essence of this Agreement.
- 2.3 [REDACTED] Project Manager who shall have authority to contractually bind [REDACTED] on all matters relating to the Exhibition. [REDACTED] shall use reasonable endeavours to ensure that the same person acts as [REDACTED] Project Manager throughout the project, but may replace her from time to time where reasonably necessary in the interests of [REDACTED] business.
- 2.4 [REDACTED] shall be responsible for:
- 2.4.1 the transportation of the Exhibits and associated materials and installation equipment to and from the Museum;
- 2.4.2 the insurance of the Exhibits whilst:
- 2.4.2.1 in transit to and from the Museum; and
- 2.4.2.2 in the Museum until immediately before the Opening and from immediately after the Close, (for the avoidance of doubt including the Private View)
- 2.4.3 the storage of the Exhibits prior to delivery to the Museum.
- 2.4.4 the provision of all the plinths, frames and other fixing materials as required by each of the Exhibits
- 2.5 [REDACTED] shall provide the Museum details of each and every Exhibit including the dimensions, materials, insurance value and full replacement value of each item in order for the Museum to ensure that adequate insurance cover can be provided whilst the objects are on display in the museum. Such information shall be provided as soon as it is available by [REDACTED] to the Museum and no later than 48 hours prior to the Opening, whichever is sooner. In the event that this information is not provided to the Museum by such deadline, the Museum shall not be responsible for the Exhibits or for their insurance, and the Museum's responsibility in this regard shall only commence 48 hours after the provision of such information.
- 2.6 [REDACTED] shall indicate to the Museum whether there needs to be any preparatory works by the Museum prior to installation of the Exhibits.
- 2.7 Whilst working at the Museum, [REDACTED] shall comply with the Museum's Health and Safety policies as are notified to [REDACTED] in writing in advance.
- 2.8 [REDACTED] shall pay for (and shall provide evidence to the Museum on request) of:
- 2.8.1 its own professional indemnity insurance and that of its subcontractors;
- 2.8.2 employers' liability insurance; and

2.8.3 public liability insurance;

to the extent as is necessary to cover its potential liabilities under this Agreement.

2.9 [REDACTED] shall organise the Private View at the Museum in discussion with and in agreement with the Museum (such agreement not to be unreasonably withheld or delayed by the Museum) and shall be responsible for the guest list and sending out invitations electronically, subject to clause 3.1(i) below. Each session of the Private View shall include no more than 600 (six hundred) guests who shall be selected as follows:

2.9.1 The guests at the first session of the Private View shall be selected by the Museum exclusively. The Museum shall additionally be able to select up to 100 (one hundred) guests to the second session of the Private View. The guests at the third session of the Private View shall be selected by [REDACTED] exclusively.

2.10 The [REDACTED] shall organise the Press Call in discussion with and in agreement with the Museum (such agreement not to be unreasonably withheld or delayed by the Museum).

2.11 [REDACTED] shall arrange basic training for relevant staff of the Museum in maintaining the Exhibits and operating animatronic Exhibits.

2.12 [REDACTED] shall agree to provide technical support and maintenance of the Exhibits for the duration of the exhibition and within a reasonable response time (of 24 hours to make an assessment and make arrangements for repair if required) provided that basic maintenance of the Exhibits is undertaken by the Museum following training by [REDACTED] pursuant to clause 2.11 above.

2.13 [REDACTED] shall provide all images and text for media relations and press release. The Museum must see and approve in advance all quotes attributed to the Museum in any statement released to the media by [REDACTED]

2.14 The Museum shall allow [REDACTED] to photograph and film the Exhibits in situ at the Museum and for the avoidance of doubt copyright in all such images shall be vested in [REDACTED]

2.15 The Museum reserves the right to document the Exhibition (but not the installation process nor anything containing any image or personal details of the Artist) as it sees fit, through photography, video or electronic media etc, for the purposes of preserving a record and archive of the event and for the avoidance of doubt copyright in all such images shall be vested in the Museum. Notwithstanding the Museum's copyright ownership, the Museum hereby irrevocably agrees not to use any such material other than for archive purposes. The commercialisation of any such material or use in a way which in the reasonable opinion of [REDACTED] would undermine the commercial activities of [REDACTED] or the Artist is expressly prohibited.

2.16 [REDACTED] shall at the conclusion of the Exhibition donate one of the Exhibits (as selected by [REDACTED] or the Artist following discussion with the Museum) to the Museum for its permanent collection.

3. 3 THE MUSEUM'S OBLIGATIONS"1 The Museum's obligations

3.1 The Museum shall use reasonable endeavours to:

- (a) Co-operate with [REDACTED] in all matters relating to the Exhibition
- (b) appoint a Museum's Project Manager, who shall, subject to the Council's constitution and other internal rules, have the authority to contractually bind the Museum and Bristol City Council on matters relating to the Exhibition;
- (c) provide in a timely manner (*in accordance with the project plan*) such access to the Museum's premises, staff and such facilities, as are reasonably requested by [REDACTED] in accordance with an agreed schedule for the purposes of preparation, installation, maintenance and de-rig of the Exhibition and Private View.
- (d) provide in a timely manner such information as [REDACTED] may reasonably request, and ensure that such information is accurate in all material respects;
- (e) provide storage facilities (which for the avoidance of doubt must be secure but do not have to be environmentally controlled) for the cases, crates and other packing materials relating to the Exhibits as agreed within the project plan.
- (f) be responsible (at its own cost) for preparing the Museum's premises for the supply of the Services agreed within the project plan. Without limitation to the generality of the foregoing, Museum shall pay for basic materials in the preparation of the Exhibition spaces, including paint, fixings and fittings and security screws etc. in the preparation of the spaces, as used by the Museum's staff for the purposes of hanging and displaying Exhibits.
- (g) close the Museum's premises to the public on DATE 1 and DATE 2 (or such other two day period as may be agreed between the parties in writing) for the purposes of the installation of the Exhibition, Press Call and Private Views.
- (h) be responsible for obtaining all necessary licences for the Private View (including a licence to serve alcohol and to play music up till 11pm).
- (i) be responsible for providing Front of House and Security staffing for the Press Call and Private View and shall provide escorted access on the day of the Press Call and Private View to [REDACTED] and [REDACTED]
- (j) provide [REDACTED] with a list of guests to be invited to the Private View on behalf of the Museum service at least 21 days prior to the date of the Private View.

3.2 The Museum will allow [REDACTED] and their contractors (including without limitation the Artist and [REDACTED] escorted access to all relevant areas of the Museum times when the Museum is closed to the general public for the purposes of installation, maintenance, photographing and dismantling of the Exhibits and the Exhibition generally in accordance with the Project Plan. The Museum shall provide technicians and such other of its personnel as reasonably requested by [REDACTED] to assist [REDACTED] in such work. The Museum acknowledges that this will require working outside of normal public opening hours and will provide access for [REDACTED] outside normal working hours for the purposes of installation, maintenance and de-rig.

3.3 The Museum shall use reasonable endeavours to ensure that the privacy and anonymity of the Artist and those working with him is preserved during such time as [REDACTED] or their contractors are in attendance at the Museum. The Museum acknowledges and agrees that such obligation includes (without limitation to the generality of the foregoing) an agreement not to store, distribute or in anyway seek to

make profit from the sale or release of CCTV footage to any third party, nor to distribute over electronic or other media such recorded images of personnel on CCTV. The Museum agrees to destroy all CCTV recorded images after a period of 30 days. Nothing in this clause 3.3 shall prevent the Museum from storing, using or disclosing CCTV footage for or in connection with reasons of security or for or in connection with compliance with its Legal Requirements (including but not limited to its obligations under the Freedom of Information Act 2000). If the Museum makes any such disclosure of the CCTV footage, it shall obscure the faces of all [REDACTED] personnel (including without limitation the Artist) other than for reasons of security or as is necessary to comply with its Legal Requirements. The provisions of this clause 3.3 are subject to the provisions of clause 19.

- 3.4 The Museum shall provide an appropriate level of security which will meet the terms of insurance and Government Indemnity Standards in order to safeguard the Exhibits during the term of the Exhibition (including during its installation and dismantling).
- 3.5 The Museum shall be solely responsible for:
- (a) overseeing the installation of the Exhibits (but the Museum shall take account of [REDACTED] advice at all times);
 - (b) assessing the risk to the Museum's permanent collections and other property including without limitation the Museum's premises;
 - (c) assessing, inspecting and approving the Exhibits and the Exhibition generally for health and safety purposes prior to the Opening and taking mitigating action if required in consultation with [REDACTED] (provided that no changes shall be made to the Exhibits without the express written consent of [REDACTED] or the Artist, which shall not be unreasonably withheld or delayed);
 - (d) subject to Clause 2.5, insuring the Exhibits whilst they are on the Museum's premises for their full replacement value (as agreed with [REDACTED], with [REDACTED] to be named as a beneficiary under the policy;
 - (e) providing an adequate level of public liability and general liability insurance to cover all relevant risks during the Exhibition.
- 3.6 The Museum shall provide copies of all certificates of insurance to [REDACTED] relating to the Museum's insurance obligations under clause 3.5 prior to the Opening.
- 3.7 [REDACTED]
[REDACTED] for the avoidance of doubt no public marketing or promotion shall occur prior to the Opening in accordance with clause 7.2 below.
- 3.8 If the Museum (acting reasonably) has any concerns regarding an Exhibit relating either to :
- 3.8.1 the contents of the Museum (including but not limited to all artefacts housed within the museum building whether on display or in storage);
 - 3.8.2 the Museum building; and/or
 - 3.8.3 health and safety,

it reserves the right to remove the Exhibit from display, provided it has first consulted with [REDACTED]

4. 4 CHANGE CONTROL"\\ 1 Change control

4.1 The Museum's Project Manager and [REDACTED] Project Manager shall meet at least once every month to discuss matters relating to the Exhibition. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing. All requests for change will be responded to within a period of 2 weeks from the date of receipt of such a request.

4.2 If either party requests a change to the scope or execution of the Services, [REDACTED] shall, within 2 weeks, provide a written estimate to the Museum of:

- (a) the likely time required to implement the change;
- (b) any variations to [REDACTED] charges arising from the change;
- (c) the likely effect of the change on the Project Plan; and
- (d) any other impact of the change on the terms of this Agreement.

4.3 Neither party has an obligation to proceed with a requested change unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Plan and any other relevant terms of this Agreement to take account of the change provided that if either party requests a change to the scope of the Services, the other party shall not unreasonably withhold or delay consent to it.

5. 5 CONSIDERATION AND COSTS"\\ 1 Consideration and Costs

5.1 This agreement is made in consideration of the mutual obligations and assurances hereunder and in consideration of the sum of £1.00 (one pound), now paid by the Museum to [REDACTED] (receipt of which is hereby acknowledged).

5.2 [REDACTED]

5.3 [REDACTED]

6. 6 INTELLECTUAL PROPERTY RIGHTS"\\ 1 Intellectual Property Rights

6.1 All Intellectual Property Rights and all other rights in the Exhibits and any materials arising from the Exhibition (including all designs, drawings, and specifications and images relating to the Exhibition) shall be owned by the Artist.

7. 7 CONFIDENTIALITY AND [REDACTED] PROPERTY"\\ 1

Confidentiality and [REDACTED] property

- 7.1 The Museum shall comply with its obligations under the Confidentiality Agreement.
- 7.2 Notwithstanding the generality of clause 7.1 above, the Museum specifically agrees that it will not undertake any marketing or promotion of the Exhibition prior to the Opening. The Museum shall obtain [REDACTED] written approval over all publicity, media, print and website information relating to the Exhibition. All media relations relating to the Exhibition are to be undertaken through [REDACTED] PR Agent (or other agent as notified to the Exhibition by [REDACTED]).
- 7.3 [REDACTED] all materials, equipment and tools, drawings, specifications and data supplied by [REDACTED] to the Museum shall at all times be and remain the exclusive property of [REDACTED] but shall be held by the Museum in safe custody at its own risk and maintained and kept in good condition by the Museum until returned to [REDACTED] and shall not be disposed of or used other than in accordance with [REDACTED] written instructions or authorisation. An agreed Inventory of such materials and equipment should be provided prior to the opening.
- 7.4 This clause 7 shall survive termination of this Agreement, however arising.
8. **8 LIMITATION OF LIABILITY" 1 Limitation of liability**
- 8.1 This clause 8 sets out the entire financial liability of each party (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the other party in respect of:
- (a) any breach of this Agreement;
 - (b) any use made by the Museum of the Services, the Exhibits or any part of them; and
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 8.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 8.3 Nothing in this Agreement excludes the liability of a party:
- (a) for death or personal injury caused by negligence; or
 - (b) for fraud or fraudulent misrepresentation.
- 8.4 Subject to clause 8.2 and clause 8.3:
- (a) a party shall not be liable to the other party, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill or similar losses; or

- (iv) loss of anticipated savings; or
- (v) loss of goods; or
- (vi) loss of contract; or
- (vii) loss of use; or
- (viii) loss or corruption of data or information; or
- (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

- (b) Each party's total liability to the other party in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to £10,000 (ten thousand pounds) for uninsured losses.

9. 9 TERMINATION"11 1 Termination

- 9.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if the other party commits a material breach of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or the other party ceases, or threatens to cease, to trade (or in the case of the Museum, to function as a public museum).
- 9.2 Termination of this Agreement, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

10. 10 FORCE MAJEURE"11 1 Force majeure

- 10.1 Neither party shall have any liability to the other under this Agreement if it is prevented from, or delayed in, performing its obligations under this Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of [REDACTED] the Museum or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm ("**Force Majeure Event**") provided that the affected party must promptly on the occurrence of such Force Majeure Event:
 - 10.1.1 inform the other party in writing of such Force Majeure Event, its commencement, nature, extent, likely duration and the obligation or duty it has delayed or prevented from being performed;
 - 10.1.2 take all reasonable steps within its power to mitigate the effects of the Force Majeure Event on the performance of its obligations and to comply with the terms of the Agreement as fully and promptly as reasonably practicable.
- 10.2 Unless the affected party takes such steps as are set out in clause 10.1, clause 10.1 shall not have the effect of absolving it from its obligations under this Agreement.

11. 11 VARIATION"\\ 1 **VARIATION**

11.1 Any variation of this Agreement shall be in writing and signed by or on behalf of the parties.

12. 12 WAIVER"\\ 1 **Waiver**

12.1 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

12.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

13. 0 SEVERANCE"\\ 1 **Severance**

13.1 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

13.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

14. 0 STATUS OF PRE-CONTRACTUAL STATEMENTS"\\ 1 **Status of pre-contractual statements**

14.1 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement other than as expressly set out in this Agreement.

15. 0 ASSIGNMENT"\\ 1 **Assignment**

15.1 Neither party shall, without the prior written consent of the other party, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

16. 0 NO PARTNERSHIP OR AGENCY"\\ 1 **No partnership or agency**

16.3 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

17. 0 THIRD PARTY RIGHTS"\\ 1 **Third party rights**

17.1 A person who is not party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Agreement.

18. 0 NOTICES"11 1 Notices

- 18.1 All written notices and other written communications to be served on or given to either party shall be sent or delivered to its registered office for the time being. Written notices and other written communications shall be treated as having been given upon actual receipt.

19 FREEDOM OF INFORMATION

- 19.1 The [REDACTED] shall use its reasonable endeavours to assist the Museum to comply with such obligations as are imposed on the Museum by the Freedom of Information Act 2000 including providing the Museum with reasonable assistance in complying with any request for information in connection with this Agreement served on the Museum under the Freedom of Information Act 2000.
- 19.2 Where the Museum receives a request to disclose information to a third party under the Freedom of Information Act 2000 which relates to this Agreement, the Museum shall wherever practically possible to do so:
- 19.2.1 inform the [REDACTED] as soon as reasonably practicable about the request for information and the nature of the information being sought;
- 19.2.2 consult with the [REDACTED] prior to the disclosure of any such information provided that the [REDACTED] responds to any consultation within the timescales requested in order that the Museum can comply with the time limits specified in the Freedom of Information Act 2000; and
- 19.2.3 consider and apply all lawful exemptions provided under the Freedom of Information Act 2000 to withhold information sought in terms of the request for information consistent with the exercise of their discretion and duties under the Freedom of Information Act 2000.
- 19.3 For the avoidance of doubt, the Museum shall have sole discretion regarding any decision regarding the its obligations under the Freedom of Information Act 2000, including any decision to disclose information.

20 DISPUTE RESOLUTION

- 20.1 Any dispute relating to the subject matter of this Agreement and the rights, duties or liabilities of the parties under this Agreement ("**Dispute**") shall first be discussed informally between the parties at a meeting following the Dispute.
- 20.2 Where the parties are unable to resolve the Dispute informally they shall attempt in good faith to resolve the Dispute through mediation.
- 20.3 Where the parties are unable to resolve the Dispute through mediation within one month of initiation of the mediation, the dispute shall be referred to a single arbitrator. The identity of the arbitrator shall be agreed between the parties (or in the absence of such agreement, the arbitrator shall be nominated by the President for the time being of the Chartered Institute of Arbitrators). Unless otherwise agreed in writing between the parties, the arbitration shall be governed by the provisions of the Arbitration Act 1996.

20.4 Any costs payable to a mediator and/or an arbitrator shall be apportioned between the parties as the mediator and/or arbitrator (as appropriate) shall determine or, in the absence of such determination, such costs shall be shared equally between the parties.

20.5 Nothing in this clause 20 shall prevent a party from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.

21 LEGAL REQUIREMENTS

21.1 Each party shall ascertain, observe, perform, and comply with all Legal Requirements, and shall do and execute or cause to be done or executed all acts required to be done under or by virtue of any Legal Requirements.

22 GOVERNING LAW AND JURISDICTION"VI 1 Governing law and jurisdiction


22.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.

22.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

AS WITNESS the hands of the duly authorised representatives of the parties the day month and year first above written

SIGNED by)
for and on behalf of)
BRISTOL CITY COUNCIL and thereby BRISTOL'S MUSEUM & ART GALLERY)

(signature)

SIGNED by)
for and on behalf of)


(signature)

Annexes

1. Project Plan
2. Budget

ANNEX 1: PROJECT PLAN

ANNEX 2: BUDGET

From: [REDACTED]
To: [REDACTED]
Date: 18/06/09 14:36:45
Subject: Re: Contract & confidentiality

[REDACTED]

Thanks for your e-mail. I'd love to come to the viewing - thanks!

Regarding the destruction of my hard and electronic documents, this should hopefully be fine but there are a couple of issues to consider first, as set out below:

1. Freedom of Information

I spoke briefly to one of our Freedom of Information lawyers and, as we've now received an FOI request (albeit one that is not currently in a valid form), we must not destroy any information that could be disclosable under FOI. However, provided that you are retaining copies of our correspondence, there is no problem in me destroying my copies as this is merely duplication of your records. As I did not correspond with anyone except you, this effectively means I could destroy all my hard and electronic records.

On a slightly separate note, it would be worth you talking to one of our FOI lawyers ([REDACTED] and [REDACTED]), if you haven't already done so, to discuss the implications of the FOI request on any other planned destruction of documents (as I presume that you have also asked other BCC employees to destroy their records).

2. Law Society Requirements

The Law Society typically require us to retain the file for a contract such as this for 6 years. However, I believe that in this situation (i.e. (i) as all my file correspondence was with you, an internal client; and (ii) as we have copies of the signed contracts), it should hopefully not be a problem to destroy the file. However, I need to run this by [REDACTED] (principal solicitor for Corporate Services) to double-check.

Therefore, provided that you are keeping your copies of our correspondence and the final signed contracts, then I should be able to destroy my records. I'll be in touch to confirm as soon as I've spoken to [REDACTED]. In the meantime, if you have asked other members of staff to destroy their records, I would suggest that you discuss the FOI implications of this with [REDACTED].

Kind regards

[REDACTED]

>>> [REDACTED] 17/06/2009 14:32 >>>

Dear [REDACTED]

Thank you for all your work on the contract for the exhibition that as you know has just opened to both critical and popular acclaim!

I am writing firstly to thank you for the advice you have given over this and secondly to request that you delete all electronic communications that you have had over this exhibition contract and confidentiality agreement, as well as any notes relating to it that you might have kept, any Word documents and any versions of the contract you may have.

Please could you also give me an accurate list of any information that you are obliged to hold - and if you can delete any files and information that you are not obliged to keep. This includes - all previous versions of the contract, all lists of notices and amendments, all e-mails to me or to others relating to this project.

I will do the same.

Finally, when things calm down a bit for me, I would be very pleased if you would like to arrange a special viewing of the exhibition soon.

Many thanks and hope to speak soon.

[REDACTED]

CC:

[REDACTED]

From: [REDACTED]
To: [REDACTED] Information, Freedom of
Date: 16/06/09 14:53:38
Subject: Re: Fwd: Freedom of Information request

[REDACTED]

I helped to negotiate/draft the contracts, so please let me know if you need any assistance regarding that side of things. As [REDACTED] said, there are tight confidentiality provisions. There are two relevant agreements: the Exhibition Agreement and the Confidentiality Agreement. The main provisions to be aware of are clauses 3.3 and 19 in the Exhibition Agreement and clause 6 in the Confidentiality agreement. In particular, we are required to consult with them before making any FOI disclosure that relates to the exhibition, although we do have ultimate discretion re compliance with our FOI obligations.

[REDACTED]

[REDACTED]

Solicitor
Corporate Services Legal Team
Bristol City Council
The Council House
College Green
Bristol
BS1 5TR

DX 7827 Bristol

Telephone: 0117 92 [REDACTED]
Fax: 0117 92 23836
E-mail: [REDACTED]@bristol.gov.uk

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>>> [REDACTED] 16/06/2009 14:26 >>>

[REDACTED]

I will ask [REDACTED] to supply you with a comment re information [REDACTED] ensure You cc people into reply please)- but contractually there is a good deal of sensitivity as you would imagine and we have signed a tight contract which includes not disclosing information, can we take legal advice? We need to be very careful with this, I should imagine this is just the first of many journalists trying to obtain information.
best
[REDACTED]

>>> Freedom of Information 16/06/2009 14:17 >>>

[REDACTED]

We have received the request below, which we must respond to.
However I am happy to point out to the requester that they are entitled to request "information" and not documents specifically. I will instead ask them to confirm exactly what "information" they require. Before I do so, please can you give me an indication of what type of information and correspondence you do / do not hold?
Thanks,
[REDACTED]

>>> "[REDACTED]@theartnewspaper.com" 12 June 2009 13:26 >>>

I am submitting a request under the Freedom of Information Act for all internal and external correspondence relating to the "Banksy vs Bristol Museum" held by Bristol City Council including emails, letters, memos etc.

thank you.

[REDACTED]
[REDACTED]
[REDACTED]

The Art Newspaper
The Sunday Times

CC: [REDACTED] Caplan, Simon; Davenport, Kate; [REDACTED]
(Museum)

From: [REDACTED]
To: [REDACTED]
Date: 21/05/09 11:50:15
Subject: Exhibition Contract

[REDACTED]

Please find attached the updated exhibition contract. If clause 19 is removed, the only consequential amendment would be the removal of the final sentence in clause 3.3.

Any other questions, given me a shout.

Kind regards

[REDACTED]

From: [REDACTED]
To: [REDACTED]
Date: 18/05/09 15:22:05
Subject: Re: Amends

[REDACTED]

Please find attached the Confidentiality Statement for individuals to sign. This should be signed by all individuals, whether Council employees or otherwise.

Incidentally, if you intend to disclose confidential information to a company, firm or organisation etc, you would also need a separate contract with the company etc (as this statement is only suitable for individuals). Please let me know if you anticipate any such arrangements and I can prepare a suitable document.

I'll have look at amendments to the Exhibition Contract and speak to you tomorrow or Wednesday.

Kind regards

[REDACTED]

>>> [REDACTED] 15/05/2009 18:21 >>>
for another chat next week

[REDACTED]



[] Museum Exhibition
Confidentiality Statement

As part of the Arrangements for the Exhibition, I understand that Confidential Information will be disclosed to me subject to my acceptance of the terms and conditions set out below:

1. DEFINITIONS

For the purposes of this document the capitalised words and expressions that follow have the meanings hereby assigned to them unless the context specifically requires otherwise.

"Arrangements"

means: (i) the discussions between the Council and the [REDACTED] regarding the possible curation of the Exhibition; and (ii) the development and staging of the Exhibition;

"Artist"

the artist known as [REDACTED];

"Confidential Information"

means such information as the Council or the [REDACTED] may from time to time provide to me, whether orally or in a written, physical or visual form, regarding the Exhibition, the [REDACTED] or the employees of clients of the [REDACTED] (including without limitation the Artist) including plans, specifications, designs, inventions, techniques, know-how, trade secrets, technical or personal information whether in existence at the date hereof or hereafter to come into existence including without limitation any copies, photographs, reproductions, duplicates or notes in any form whatsoever or other materials;

"Council"

means Bristol City Council;

"Exhibition"

means the exhibition of works by the Artist provisionally entitled "[REDACTED]";

"Museum's Project Manager"

means [REDACTED];

"[REDACTED]"

means [REDACTED], whose registered address is [REDACTED];

2. USE OF INFORMATION

- 2.1 Subject to the provisions of Clause 3 and only to the extent reasonably necessary in connection with the Arrangements, I may:
- 2.1.1 analyse the Confidential Information;
 - 2.1.2 incorporate the Confidential Information into reports and analyses.
- 2.2 I undertake to keep the Confidential Information in complete confidence and, save as expressly permitted under this document, I undertake not to disclose, use, copy in whole or in part or modify or adapt the Confidential Information in any way without the Museum Project Manager's prior written consent.
- 2.3 I undertake not to use any of the Confidential Information so as to procure any commercial advantage over the [REDACTED]

3. Exemptions to the duty of confidentiality

- 3.1 The obligations under Clause 2 do not apply to, and the term "Confidential Information" shall be deemed to exclude any information which I can prove:
- 3.1.1 [REDACTED] was known to me prior to any such disclosure to me by the Council or [REDACTED]
 - 3.1.2 [REDACTED] was independently derived by or for or disclosed to me PROVIDED THAT the person deriving or disclosing the same had not at the time of such derivation or disclosure, had disclosed to him any Confidential Information;
 - 3.1.3 [REDACTED] is required by law, regulation or order of a court of competent jurisdiction.
- 3.2 In the event that I become compelled to disclose any Confidential Information under Clause 3.1.3, immediate notice of such fact shall be given to the Museum Project Manager so that he or she may seek an appropriate remedy to prevent such disclosure and I will take such steps as required for such purpose.

4. CONFIDENTIALITY OF NEGOTIATIONS

- 4.1 I undertake to keep the existence of the evaluations, discussions and negotiations in relation to the Arrangement confidential and not to make any disclosure of interest in, public announcement in relation to, or public comment on, the Arrangements without the Council's prior written consent.
- 4.2 Without the prior written consent of the Council during negotiations and, failing completion of the Arrangement, for five years after the date hereof, I undertake not to directly or indirectly initiate or accept or engage in any contacts of any kind with any employee, customer, supplier, agent or broker of the [REDACTED] nor with any other party having any actual or prospective connection with the [REDACTED]. The provisions of this Clause 4.2 shall not apply in relation to matters that do not breach confidentiality and arise in the ordinary course of business.
- 4.3 I shall return to the Council on written demand any and all written documents or materials entrusted to me in the course of or prior to negotiations in relation to the Arrangement together with all copies thereof which shall have been made by or on my behalf.

5. **Continuing effect**

5.1 I undertake to comply with the obligations of this document in perpetuity.

Signature

.....

Name of Individual

.....

Position

.....

Organisation / Company

.....

Date

.....

From: [REDACTED]
To: [REDACTED]
Date: 14/05/09 16:10:36
Subject: Amended contracts

[REDACTED]

Please find attached the updated contracts. There are a couple of small points that I need to double-check with you before it can be issued to the [REDACTED] so if you could give me a quick call when you're back in the office we can finalise these (it shouldn't take more than 15 minutes).

Kind regards

[REDACTED]
[REDACTED]
Solicitor
Corporate Services Legal Team
Bristol City Council
The Council House
College Green
Bristol
BS1 5TR

DX 7827 Bristol

Telephone: 0117 92 [REDACTED]
Fax: 0117 92 23836
E-mail: [REDACTED]@bristol.gov.uk

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DATED

2009

[REDACTED]

- and -

Bristol City Council (2)

AGREEMENT FOR THE EXHIBITION:

Title of exhibition
