

William Thackeray
request-63913-1b30f78f@whatdotheyknow.com

01 April 2011

Dear Mr Thackeray,

FREEDOM OF INFORMATION ACT 2000 – REVIEW 1115 of REQUEST 1113

Thank you for your request of 04 March 2011 asking for an internal review of the British Library's response to your Freedom of Information Request 1113. I appreciate the opportunity this has given us to scrutinise in careful detail both the process used and the decisions made in handling your request.

In undertaking the internal review I have carried out a detailed reassessment of two matters relating to your request, namely:

- the process by which your response was handled; and
- the content of the response provided to you.

Process

My review of your Request 1113 has found that the Library's processes were followed correctly throughout.

Content

Your request of 02 March 2011 asked:

Under FOIA, I request that you provide, in electronic format to this email address, the following book:

Atack, Jon. A piece of blue sky : Scientology, Dianetics, and L.

Ron Hubbard exposed / (New York, NY : Carol Pub. Group, 1990.)

91/10703 (081840499X)

Please include all pages. Monochrome will be fine.

The Library responded on 04 March 2011 confirming that the British Library does indeed hold a copy of this book, but advising you that, since it is reasonably accessible to you by other means including commercial purchase,

the work is exempt from disclosure under Section 21 of the Freedom of Information Act.

My review has re-assessed the validity of this argument, and I find it to have been correct.

Section 21 states that 'Information which is reasonably accessible to the applicant otherwise than under Section 1 is exempt information... [and that] information may be reasonably accessible to the applicant even though it is accessible only on payment'. The fact that this work is for sale via commercial retailers clearly makes this work accessible to you by other means, and those means do not (contrary to your argument in your request for internal review) have to be via a public authority under the Act; rather, the simple fact that the work in question is widely available for sale at a reasonable price brings the information in question into the scope of Section 21. The Library's initial response to your request provided suggestions as to various means by which the work in question might be accessed in order to meet our duty to provide advice and assistance to you.

I note your assertion that buying the book yourself would not meet your preference for the information to be provided electronically, but I believe that you have made an error in your interpretation of the Act. Section 11 of the Act requires the Library to communicate any information to which a requestor is entitled in a format of their preference, insofar as it is reasonably practicable. This however, presupposes an assessment as to whether a requestor is entitled to any information under the Act. Where an exemption applies, the requestor is not entitled to the information and so a preference given under Section 11 is not relevant.

Even if this were not the case, such provision would not be reasonably practicable in this case. I note that you reference ICO Awareness Guidance 6; this guidance states the ICO's belief that it would normally be reasonably practicable for an institution to provide a hard-copy version of electronic information, so as to ensure that those without access to a computer are not disadvantaged, but the guidance does not suggest that the opposite action of digitising a hard-copy work would automatically be reasonably practicable. In this case the copyright of the work in question belongs to the author or publisher and the Library would not legally be able to reproduce the work without permission, and such permission is unlikely to be granted. Even if it were permissible, the act of digitising a commercial work in full would likely be significantly more expensive than purchasing a copy of the work, and such expenses would need to be met by the requestor in line with the Library's normal policy on Disbursements.

Again, even if Section 21 did not apply, a request to publish a commercial work which is currently under copyright would likely be exempt from disclosure under Section 43(2) of the Act, in that such publication would prejudice the

commercial interests of the author and publisher by depriving them of their legitimate fee. I thank you for drawing my attention to ICO Decision Notice FS50217416, but I do not believe that this is relevant in this case. The Decision Notice you cite relates to a request for information that was the copyrighted property of the public body to whom the request was made, which weakened the arguments of commercial prejudice; however, in this case you are asking that the Library infringe the copyright of another party, which would be to the detriment of the commercial interests of the entire publishing industry as well as the interests of the specific author and publisher. As previously, where an exemption applies, the expression of a format preference made under Section 11 does not come into play as there is no information to communicate.

If you are not content with the outcome of this internal review, you may appeal directly to the Information Commissioner at the address given below. You should do this within two months of our final decision. There is no charge for making an appeal.

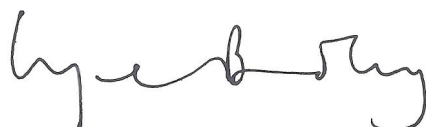
Further information on the Freedom of Information Act 2000 is available from the Information Commissioner's Office:

Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Telephone 08456 30 60 60 or 01625 54 57 45

Website www.ico.gov.uk

Yours sincerely,



Dame Lynne Brindley DBE
Chief Executive