

23 May 2019

GIRL FORUM

By Email to: info@girlforum.org

Dear GIRL FORUM

Freedom of Information Act Request – Case 784

Thank you for your request under the Freedom of Information Act received by us on 11 April 2019.

For clarity, please see responses to each of your questions in turn, below.

1. *The date the decision was made by Tate Trustees to recommence ties with Anthony D'Offay.*

Trustees reviewed the situation on 21 November 2018. Trustees noted that Mr D'Offay had retired from all roles in respect of ARTIST ROOMS and the Artist Rooms Foundation and there had been no further developments. They agreed that the status of the relationship, in particular in relation to the works in the Artist Rooms Collection, should be further discussed and resolved.

With the support of Trustees and following discussion with the National Galleries of Scotland, on 11 January 2019 Tate informed ARTIST ROOMS partners that the suspension of contact with Mr D'Offay and the ARTIST ROOMS office was no longer in effect. The future business plan for ARTIST ROOMS was discussed by Trustees on 20 March 2019.

2. *The minutes of the meeting of the Trustees at which this decision was taken and the minutes of any other meeting at which the Tate's relationship with Anthony D'Offay was discussed along with any other record of the deliberation(s) taken by Trustees on this matter.*

The minutes of these meetings contain personal information and so remain confidential. Taking into account the reasonable expectation that a party would have to fair processing of this information, this confidentiality should be respected and is therefore withheld under section 40 (2) of the Freedom of Information Act (2000). Disclosure of the information to a member of the public would also contravene Article 21 of the GDPR. Material is also

withheld under Section 40 (5B) (b) of the Freedom of Information Act (2000). In this case, disclosure would breach data protection with regard consent and the lawful and fair processing of personal data. It is the fairness aspect of this principle, which, in our view, would be breached by disclosure. In such circumstances, s.40 confers an absolute exemption on disclosure. There is, therefore, no public interest test to apply.

Information is also withheld under Section 36 of the Freedom of Information Act, which pertains to the efficient conduct of public affairs. Section 36 is a qualified exemption: any public interest in the information being common knowledge must be balanced against maintaining confidentiality. Tate's Freedom of Information Group has considered this and hold that the discussion would have been materially prejudiced and frank exchange impeded by the possibility that the detail of deliberations and debate would be made public knowledge. The information should therefore remain confidential.

3. *The minutes of the Tate Ethics Committee(s) at any time between 2017 and the present at which the Gallery's relationship with D'Offay was discussed and the recommendation(s) and any associated report by the Ethics Committee, or any other body, made to the Tate Board on or related to the matter of this relationship.*

Beyond the meeting just mentioned, the relationship with Anthony D'Offay was discussed or updates given in the following contexts.

- A meeting of the Ethics Committee of 12 December 2017
- A meeting of the Ethics Committee of 23 February 2018
- A meeting of the Board of Trustees of 21 March 2018
- An update at the Board of Trustees of 23 May 2018
- Reference to the donor in the Annual Review of major donors by the Ethics Committee (21 February 2019)

At two of these meetings, Mr D'Offay was mentioned as part of the general annual review of major donors and we have disclosed those mentions below. At the meeting of the Ethics Committee of 23 February 2018, the report was as follows:

Tate Relationship: [*Here, information relating to the sums of specific donations is withheld under Section 40 (2) of the Freedom of Information Act (2000)*]. Anthony made a major gift of his collection, ARTIST ROOMS, to Tate and the National Galleries of Scotland in 2009. As of December 2017, there have been 165 exhibitions shown in 78 venues across the UK, with over 3.5 million visits to Associate exhibitions. Since 2009, when the touring programme was established, ARTIST ROOMS exhibitions around the UK have seen almost 41 million visitors, including visits to Tate and the National Galleries of Scotland. Anthony stepped down as ex-officio curator to ARTIST ROOMS on 19 December 2017.

Profile: Anthony began dealing contemporary art in the late 1960s. In 1980 he opened the Anthony d'Offay Gallery, representing artists such as Gerhard Richter, Gilbert and George, Richard Long and Richard Hamilton. He also represented many of the Young British Artists including Rachel Whiteread. The gallery closed in 2002.

In 2010, Anthony and Anne received the Prince of Wales Medal for Arts Philanthropy, while he received the UK Montblanc de la Culture Art Patronage Award in 2009.

Areas of Possible Concern: In January 2018, *The Observer* reported that Anthony d'Offay is facing a number of allegations of sexual harassment and inappropriate behaviour from three women with whom he has previously worked. The allegations date from 1997 to 2004. Tate and

National Galleries of Scotland issued a joint statement announcing that they have suspended further contact with Mr d'Offay until the matters have been clarified.

Similarly, Mr D'Offay was mentioned as part of the following annual review of major donors at the meeting of the Ethics Committee of 21 February 2019. The report was as follows:

Tate Relationship: [*Here, information relating to the sums of specific donations is withheld under Section 40 (2) of the Freedom of Information Act (2000)*] Anthony made a major gift of his collection, ARTIST ROOMS, to Tate and the National Galleries of Scotland in 2009. Anthony stepped down as ex-officio curator to ARTIST ROOMS on 19 December 2017.

Profile: Anthony began dealing art in the late 1960s. In 1980 he opened the Anthony d'Offay Gallery, representing artists such as Gerhard Richter, Gilbert and George, Richard Long and Richard Hamilton. He also represented many of the Young British Artists including Rachel Whiteread. The gallery closed in 2001.

In 2010, Anthony and Anne received the Prince of Wales Medal for Arts Philanthropy, while he received the UK Montblanc de la Culture Art Patronage Award in 2009.

Areas of Possible Concern: In January 2018, *The Observer* reported that Anthony d'Offay is facing a number of allegations of sexual harassment and inappropriate behaviour from three women with whom he has previously worked. In February 2018, the campaign group We Are Not Surprised called on Tate to sever all ties with d'Offay, including removing his name from the Turbine Hall plaques and ARTIST ROOMS project. Tate replied that it was unable to discuss the matter.

In each of these two cases, the report of annual donors was noted by members of the Committee.

The relationship with Mr D'Offay was more specifically discussed as an item elsewhere in the agenda and in the other meetings mentioned above. We have given careful consideration to the request for minutes of these discussions. They include personal information; taking into account the reasonable expectation of fair processing of this information, its confidentiality should be respected and is therefore withheld under section 40 (2) of the Freedom of Information Act (2000). Disclosure of the information to a member of the public would also contravene Article 21 of the GDPR. Material is also withheld under Section 40 (5B) (b) of the Freedom of Information Act (2000).

As above and for the reasons identified, information is also withheld under Section 36 of the Freedom of Information Act, which pertains to the efficient conduct of public affairs.

4. Any other assessment of accusations against D'Offay in relation to the Tate's Ethics Policies and any information or reports regarding reputational or similar audits and/investigations conducted by Tate (or parties contracted by Tate) relating to D'Offay, Artist Rooms, and the Artist Rooms Foundation, including any assessments with regard to impacts on fulfilment of Tate's mission.

In light of allegations made in the press and on social media, Tate undertook due diligence in line with its dignity and respect policy. As detailed above, the personal information involved is withheld.

As above and for the reasons identified, information is also withheld under Section 36 of the Freedom of Information Act, which pertains to the efficient conduct of public affairs.

If you are not satisfied with this response to your request for information, you may seek an internal review of this response by replying in writing to this letter. Tate will respond to your request for a review within 20 working days of the receipt of your request.

If you remain dissatisfied with Tate's response following an internal review, you may seek an independent adjudication on the matter from the Information Commissioner, who can be contacted at:

Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Or you may telephone on:
Tel: 01625 545 745

Yours sincerely,

Samuel Jones
On behalf of Tate's Freedom of Information Group

Appendix

Section 36 – Prejudice to effective conduct of public affairs.

(1) This section applies to—

(a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and
(b) information which is held by any other public authority.

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—

(a) would, or would be likely to, prejudice—

(i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
(ii) the work of the Executive Committee of the Northern Ireland Assembly, or
(iii) the work of the executive committee of the National Assembly for Wales,

(b) would, or would be likely to, inhibit—

(i) the free and frank provision of advice, or
(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

(3) The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).

(4) In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words "in the reasonable opinion of a qualified person".

(5) In subsections (2) and (3) "qualified person"—

(a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown,

(b) in relation to information held by a Northern Ireland department, means the Northern Ireland Minister in charge of the department,

- (c) in relation to information held by any other government department, means the commissioners or other person in charge of that department,
- (d) in relation to information held by the House of Commons, means the Speaker of that House,
- (e) in relation to information held by the House of Lords, means the Clerk of the Parliaments,
- (f) in relation to information held by the Northern Ireland Assembly, means the Presiding Officer,
- (g) in relation to information held by the National Assembly for Wales, means the Assembly First Secretary,
- (h) in relation to information held by any Welsh public authority other than the Auditor General for Wales, means—
 - (i) the public authority, or
 - (ii) any officer or employee of the authority authorised by the Assembly First Secretary,
- (i) in relation to information held by the National Audit Office, means the Comptroller and Auditor General,
- (j) in relation to information held by the Northern Ireland Audit Office, means the Comptroller and Auditor General for Northern Ireland,
- (k) in relation to information held by the Auditor General for Wales, means the Auditor General for Wales,
- (l) in relation to information held by any Northern Ireland public authority other than the Northern Ireland Audit Office, means—
 - (i) the public authority, or
 - (ii) any officer or employee of the authority authorised by the First Minister and deputy First Minister in Northern Ireland acting jointly,
- (m) in relation to information held by the Greater London Authority, means the Mayor of London,
- (n) in relation to information held by a functional body within the meaning of the M1 Greater London Authority Act 1999, means the chairman of that functional body, and
- (o) in relation to information held by any public authority not falling within any of paragraphs (a) to (n), means—
 - (i) a Minister of the Crown,
 - (ii) the public authority, if authorised for the purposes of this section by a Minister of the Crown, or
 - (iii) any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown.
- (6) Any authorisation for the purposes of this section—
 - (a) may relate to a specified person or to persons falling within a specified class,
 - (b) may be general or limited to particular classes of case, and
 - (c) may be granted subject to conditions.
- (7) A certificate signed by the qualified person referred to in subsection (5)(d) or (e) above certifying that in his reasonable opinion—
 - (a) disclosure of information held by either House of Parliament, or
 - (b) compliance with section 1(1)(a) by either House,
 would, or would be likely to, have any of the effects mentioned in subsection (2) shall be conclusive evidence of that fact.

Section 40 - Personal information

- (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
- (2) Any information to which a request for information relates is also exempt information if—
 - (a) it constitutes personal data which does not fall within subsection (1), and
 - (b) the first, second or third condition below is satisfied.
- (3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—
 - (a) would contravene any of the data protection principles, or
 - (b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.
- (3B) The second condition is that the disclosure of the information to a member of the public otherwise than under this Act would contravene Article 21 of the GDPR (general processing: right to object to processing).
- (4A) The third condition is that—

(a) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for access to personal data, the information would be withheld in reliance on provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018, or

(b) on a request under section 45(1)(b) of that Act (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.

(5A) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

(5B) The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies—

(a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)—

(i) would (apart from this Act) contravene any of the data protection principles, or

(ii) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded;

(b) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene Article 21 of the GDPR (general processing: right to object to processing);

(c) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for confirmation of whether personal data is being processed, the information would be withheld in reliance on a provision listed in subsection (4A) (a);

(d) on a request under section 45(1)(a) of the Data Protection Act 2018 (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.

(6)

(7) In this section—

“the data protection principles” means the principles set out in—

(a) Article 5(1) of the GDPR, and

(b) section 34(1) of the Data Protection Act 2018;

“data subject” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

“the GDPR”, “personal data”, “processing” and references to a provision of Chapter 2 of Part 2 of the Data Protection Act 2018 have the same meaning as in Parts 5 to 7 of that Act (see section 3(2), (4), (10), (11) and (14) of that Act).

(8) In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (disapplying the legitimate interests gateway in relation to public authorities) were omitted.