

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 March 2017

**Public Authority:** Regent's University London  
**Address:** Inner Circle  
Regent's Park  
London  
NW1 4NS

### Decision (including any steps ordered)

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1. The complainant has requested information from Regent's University London ("the University") about its security department. The University did not initially respond. It subsequently explained that it had not received the request, and, in any event, it would not have been obliged to respond on the basis that it is not a public authority for the purposes of FOIA. The Commissioner has determined that the University is not subject to FOIA and therefore it does not have a duty to issue a response under the legislation. Accordingly she does not require any steps to be taken as a result of this notice.

### Request and response

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2. On 30 September 2016, the complainant wrote to the University and requested information in the following terms:

*"I am making the below request under the Freedom of Information Act (2000) in relation to research I am undertaking.*

*1 - Do you have a University Security department?*

*2 - If you do is this function provided 'in-house' or by an external company?*

*3 - If either 'in-house' or external, does any individual within the Security remit hold accredited powers gained from the Community Safety Accreditation Scheme of the Police Reform Act (2002)?*

*4- If so what specific powers exercisable by such accredited persons as detailed in Schedule 5 of the Police Reform Act (2002) are held?"*

3. The University did not respond. After receiving a letter from the ICO reiterating the request and asking it to respond, the University stated on 12 January 2017 that it had not received the original request. Furthermore, it stated that it was not a public authority and so was not required to respond to requests made under the FOIA.

### **Scope of the case**

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4. The complainant contacted the Commissioner on 11 November 2016 to complain about the way his request for information had been handled. Following the response from the University on 12 January 2017, the complainant returned to the Commissioner to ask her to determine whether the University had a duty under FOIA to respond to his request.
5. The Commissioner considers the scope of this case to be the question of whether the University is a public authority for the purposes of the FOIA.
6. In the case of *Fish Legal v Information Commissioner & Others* (GIA/0980/2011), the Upper Tribunal ruled that the Commissioner has jurisdiction to investigate and decide whether a body is a public authority. Her decision on the status of the University follows.

### **Reasons for decision**

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#### **Definition of a public authority in FOIA**

7. The FOIA gives members of the public the right to access recorded information held by public authorities and places a duty on public authorities to respond to requests for such information.
8. The definition of a 'public authority' is given in section 3(1) of FOIA –
  - (a) subject to section 4(4), any body which, any other person who, or the holder of any office which –
    - (i) is listed in Schedule 1, or
    - (ii) is designated by order under section 5, or

(b) a publicly-owned company as defined by section 6

### **Schedule 1 – paragraph 53(1)**

9. Part IV of Schedule 1 refers to educational institutions and states at paragraph 53(1) that a public authority includes the governing body of five different categories of bodies. These are listed below, together with a summary of the University's explanations which demonstrate why it considers it does not fall within any of the categories.
10. Paragraph 53(1) states that a public authority includes the governing body of -

(a) an institution within the further education sector

Further education is interpreted to mean education that is usually taught in the sixth-form college part of a school, in independent Further Education colleges, as well as in other work-based, adult and community learning institutions. Based on this understanding, the University states that it would not fall within the definition.

(b) a university receiving financial support under section 65 of the Further and Higher Education Act 1992 (FHEA)

The University states that it does not receive direct funding from the Higher Education Funding Council for England (HEFCE) under section 65 of the FHEA.

(c) an institution conducted by a higher education corporation

This category refers to higher education bodies maintained by Local Education Authorities. The University states that it does not fall into this category.

(d) a designated institution for the purposes of Part II of the FHEA as defined by section 72(3) of that Act

Section 72(3) FHEA provides that the term 'designated institution' means an institution to which a designation order had been made or having effect as if made under section 129 of the Education Reform Act 1988 (ERA). Section 129 of the ERA confirms that:

“(1) The Secretary of State may by order designate as an institution eligible to receive support from funds administered by a higher education funding council—

(a) any institution which appears to him to fall within subsection (2) below; and

(b) any institution which is, or is to be, conducted by a successor company to a higher education corporation.

(2) An institution falls within this subsection if its full-time equivalent enrolment number for courses of higher education exceeds 55 per cent. of its total full-time equivalent enrolment number."

The University states that it is not aware that it is a designated institution for the purposes of Part II of the FHEA.

(e) any college, school, hall or other institution of a university which falls within paragraph (b).

The University states that it is not a college, school, hall or other institution of a university receiving financial support under section 65 of the FHEA, that is, receiving direct HEFCE funding.

### **Section 5 – other bodies designated as subject to the FOIA**

11. Section 5 of the FOIA provides that the Secretary of State or the Minister for the Cabinet Office may designate a public authority by order.
12. Since the FOIA came into effect, statutory instruments designating bodies as subject to the FOIA have been authorised; however, the University states that it is not the subject of such a designation order.

### **Section 6 - publicly owned companies**

13. Section 6 of the FOIA states that a company is a 'publicly-owned company' for the purposes of section 3(1)(b) if it is wholly owned by the Crown, or is wholly owned by any public body listed in Schedule 1 (other than a government department, or any authority which is listed only in relation to particular information).
14. The University states that it is not a publicly-owned company within the meaning of sections 3 and 6 of the FOIA.

### **The complainant's view**

15. The complainant observed that a document on the University's website, *Regents Guide for External Examiners* ("the Guide"), referred to freedom of information requests, and argued that this made provision for freedom of information requests being made.
16. However, the University has explained that this reference had been included in the Guide by way of an administrative error, and that the Guide has now been rectified.

### **The Commissioner's decision**

17. The Commissioner accepts that the Secretary of State has not, at the date of this decision notice, made an order under section 5 designating the University as a public authority.
18. The Commissioner has considered whether the University is a publicly-owned company as defined by section 6 FOIA.
19. As stated on its website, the University is an independent, not-for-profit organisation, a registered charity, and a company limited by guarantee.
20. The University is funded through a number of channels. The majority of its income is generated through tuition fees.
21. Other sources of income include investments, charitable donations and endowments, and partnerships with international educational establishments. In addition, the University's subsidiary company carries out ancillary conferencing services.
22. The University does not receive government funding under the FHEA and operates independently of government.
23. Accordingly, the Commissioner is of the view that the University is neither wholly owned by the Crown, nor any public authority listed in Schedule 1, and therefore does not satisfy the definition of a publicly-owned company as defined in section 6 of the FOIA.
24. In addition, while it is evident that the University operates as an educational establishment with degree awarding powers and university status, the Commissioner accepts that the University does not fall within the definitions of a public authority set out in section 53(1) due to its independent status and the fact that it does not receive government funding under the FHEA.
25. The Commissioner therefore agrees with the University that it is not required to respond to the complainant's request under FOIA.

## Right of appeal

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26. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

27. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed** .....

**Alun Johnson**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**