

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 May 2018

Public Authority: University of Cambridge
Address: The Old Schools
Trinity Lane
Cambridge
CB2 1TN

Decision (including any steps ordered)

1. The complainant has requested from the University of Cambridge (the University) information relating to research grants and sponsorship.
2. The Commissioner's decision is that the request would impose a grossly oppressive burden on the University and that the University correctly applied section 14(1) of the FOIA to refuse to comply with the request.
3. The Commissioner does not require the University to take any steps.

Request and response

4. On 9 May 2017 the complainant wrote to the University and requested information in the following terms:

"Please email me details of all research grants and sponsorship moneys paid to a) the Psychometrics Centre of the Cambridge Judge Business School, b) the Department of Psychology, or c) the Department of Applied Mathematics and Theoretical Physics, or to their members, from sources outside the University (including private sector actors) since 1 January 2015, the information to include the amount of the grant or sponsorship, a summary of the aims of the research, the project's start date and its actual or projected end date, and the names of the people responsible for the project and the researchers involved."
5. On 7 June 2017 the University responded. It refused the request under section 14(1) of the FOIA because it considered it to be vexatious.

6. On 9 June 2017 the complainant asked for an internal review. On 5 July 2017 the University provided its internal review outcome and maintained its position.

Scope of the case

7. The complainant contacted the Commissioner to complain about the refusal of her information request. The complainant also raised the issue of section 16(1) of the FOIA and questioned whether the University had provided her with adequate advice and assistance.
8. The scope of this notice is to determine whether the request would impose a grossly oppressive burden on the University and hence it is entitled to rely on section 14(1) of the FOIA. When citing section 14(1), not providing advice and assistance does not amount to a breach of section 16(1), hence that section is not covered in the following analysis.

Reasons for decision

Section 14

9. Section 14(1) provides that a public authority is not obliged to comply with a request that is vexatious. In this case the University cited section 14(1) on the basis of the burden that it believes the request would impose upon it.
10. Ordinarily, where the concern of a public authority is about the burden of a request, the relevant provision of the FOIA would be section 12(1). This section provides that a public authority is not obliged to comply with requests where the cost of doing so would exceed a limit. However, a public authority cannot claim section 12 for the cost and effort associated with considering exemptions or redacting exempt information, which was the concern of the University in this case.
11. A public authority may apply section 14(1) where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation. This can include time spent on considering exemptions and making redactions.
12. However, the Commissioner considers there to be a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where:

- The requester has asked for a substantial volume of information **and**
 - The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO **and**
 - Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.
13. The Commissioner considered the representations received from both the complainant and the University in order to understand to what extent the request would impose a burden.

The University's position and the Commissioner's view

14. The University was asked to provide some further information to support its position. In its response, the University reported that there is a substantial number of research grants in scope - 323. It said that there were concerns about disclosing certain information in relation to which exemptions in Part II of the FOIA might be engaged. These included sections 40(2) (personal information) and 43(2) (prejudice to commercial interests). It also referred to reviewing contracts for confidentiality clauses, which indicated that it also believed that section 41(1) (information provided in confidence) may apply to some of the information.
15. In relation to section 40(2), the concern of the University was disclosure of the names specified in the complainant's request. The University stated that it would be necessary for it to contact each of the named individuals and seek their views on the disclosure of their personal data.
16. The Commissioner agrees that it was appropriate for the University to consider section 40(2) given that the information request covered what would clearly be the personal data of third parties. However, it is not the case that it would have been necessary for the University to carry out a consultation with each of the named individuals. That approach is not required by either the FOIA or the Data Protection Act and would not have been proportionate in this case.

17. Instead, the University should have assessed for itself whether disclosure of the personal data was appropriate. If it did not believe that disclosure was appropriate, it should have cited section 40(2). As it was not necessary for the University to consult with any individual about the disclosure of their personal data, the Commissioner does not accept that the time the University expected to spend on that exercise is valid reasoning for citing section 14(1).
18. On section 41(1), the University explained that research grants from private sources are governed by individually negotiated contracts that often include confidentiality clauses. Whilst the University did not specifically refer to this section, this reasoning is relevant to section 41(1), which provides an exemption for information provided to a public authority in confidence. The reasoning from the University was that it would be necessary to review the contractual documentation relating to each of the 323 research grants in order to ascertain which of these included confidentiality clauses.
19. On this point, the Commissioner accepts first that it is likely that some of the providers of the grants and sponsorships would have preferred their involvement and other details to remain confidential and that confidentiality clauses may have been inserted into contracts in order to ensure this. It follows from this that the Commissioner also accepts that it was reasonable for the University to wish to review the contractual documentation relating to the information requested prior to complying with the request. As this would involve reviewing documentation relating to 323 awards, it is clear that this would be a substantial task.
20. Turning to section 43(2), this section provides an exemption for information the disclosure of which would be likely to prejudice commercial interests. The University stated that there are often legitimate reasons for protecting both the funder and the research from public knowledge before its completion. Examples include funding from businesses, where the research may be aimed at developing a trade secret or patentable innovation. Disclosure of the requested information, which includes details of the subject of the research which each of the funding awards relates to, would in the Commissioner's view have clear potential to prejudice commercial interests. She accepts, therefore, that it was reasonable for the University to take steps relating to this exemption prior to complying with the request.

21. Where a public authority is applying section 43(2) on the basis of prejudice to the commercial interests of a third party, the Commissioner expects the public authority to have consulted with that third party prior to refusing the request on that basis. In this case, this would mean that the University would be required to consult with the providers of all of the 323 awards as to whether they believed that disclosure of the requested information would be likely to prejudice their commercial interests. Given this, the Commissioner accepts that consideration of this exemption would be a very substantial task.
22. The Commissioner has viewed a copy of the report which the University had submitted. She notes that this report contains details of 323 research grants. The Commissioner is satisfied that complying with the request would create a significant burden on the University due to the tasks involved to ascertain whether any information would be exempt from disclosure under sections 41(1) and 43(2).
23. The complainant is of the view that the decision by the University to refuse to supply the requested information was unjustified and incorrect. In particular, she argued that the University should have considered section 12(1) rather than section 14(1) if its concern was the burden that the request would impose.
24. In regards to the complainant's concern about the University's application of section 14 rather than section 12 to the request, the Commissioner has considered this. She notes from the University's response that it was able to identify the information sought readily from an automated search of its database. The University did not consider the exercise of gathering the requested information to be overly time consuming. Therefore, the Commissioner accepts that section 12 of the FOIA was not applicable in this case.

Conclusion

25. In conclusion, all information requests impose some burden and public authorities have to accept that in order to comply with their FOIA obligations. However, in some cases the burden imposed by a request will be disproportionate to its value.
26. In this case, whilst the Commissioner rejected the reasoning from the University relating to section 40(2), she accepts that the University would be required to carry out actions relating to sections 41(1) and 43(2) for the 323 grants. She also accepts that these actions would impose a grossly oppressive and disproportionate burden upon the University. Therefore, the Commissioner's decision is that the request was vexatious under section 14(1) of the FOIA and the University was not obliged to comply with it.

Right of appeal

27. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.
29. 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

Ben Tomes
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