

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 August 2018

**Public Authority:** University of Nottingham  
**Address:** University Park  
Nottingham  
Nottinghamshire  
NG7 2RD

#### Decision (including any steps ordered)

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1. The complainant has requested information on the correspondence from a named Professor. The University of Nottingham (the University) stated that the information was not held for the purposes of the FOIA under the provisions of section 3(2).
2. The Commissioner's decision is that the requested information is not held by the University for its own purposes and therefore falls outside the definition of information held for the purposes of FOIA under section 3(2). She requires no steps to be taken.

#### Request and response

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3. On 20 November 2017 the complainant requested the following information:

*'1) Copies of correspondence regarding the economics of Brexit between Professor David Paton at Nottingham University Business School and the following individuals:*

- Professor Patrick Minford
- Professor Kent Matthews
- Rt. Hon. Owen Paterson MP
- Jacob Rees-Mogg MP
- Edgar Miller

*Between 15 July 2017 – present.*

*2) Copies of all correspondence involving Professor David Paton and containing reference to "Economists for Free Trade"; "New Model Economy"; "Project Fear to Project Prosperity"; "Economists for Brexit"; and "Budget for Brexit" between 1 August – 7 September 2017 and October 15 – November 15 2017.'*

4. On 18 December 2018 the University responded that it was unable to provide the requested information as *'the individuals involved are not representing the University of Nottingham in their activities and the activities do not fall within their work duties for the University.'*

5. The complainant requested an internal review on 5 January 2018. He argued that:

*'Professor David Paton's role within the Economists for Free Trade and his role within the University at the University Business School have a crossover due to related topics involved in both cases and that in this case the individual is representing the University to such a degree that the information is held under the act.'*

6. The University sent the outcome of its internal review on 16 February 2018 upholding the decision that the University does not hold the requested information for the purpose of the FOIA:

*'Professor Paton's Head of School has confirmed that the activities and correspondence you are seeking information in relation to are external to Professor Paton's role at the University. It is my opinion therefore that even if we were to attempt to consider your request under FOIA, any search for information would only identify correspondence that would qualify as Professor Paton's personal data.'*

## **Scope of the case**

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7. The complainant contacted the Commissioner on 14 March 2018 to complain about the way his request for information had been handled. In particular the complainant did not agree that the requested information was not held on behalf of the University.

8. The Commissioner considers that the scope of the investigation is to determine if the requested information is excluded from FOIA because the information requested was not held for the University's own purposes and therefore falls outside the definition of information held for the purposes of FOIA under section 3(2).

## Reasons for decision

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### Section 3(2) – information held by a public authority

9. Section 1 of the FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it.
10. Section 3(2) sets out the criteria for establishing if information is held for the purposes of the FOIA:

*"For the purposes of this Act, information is held by a public authority if*

*(a) it is held by the authority, otherwise than on behalf of another person, or*

*(b) it is held by another person on behalf of the authority."*

11. The Commissioner's guidance on "Information held by a public authority for the purposes of the FOIA" (<https://ico.org.uk/media/for-organisations/documents/1148/information-held-by-a-public-authority-for-purposes-of-foia.pdf>) states that when a public authority holds information solely on behalf of another person it is not held for the purposes of the FOIA and that each case needs to be considered according to the specific circumstances.
12. The Commissioner's guidance considers that a key determining factor is whether the University has any interest in, or control over, the disputed information.

#### The University's position

13. The University stated that Professor Paton undertakes his engagement with the people and lobby groups listed in the request in a role that is entirely external to that which he is employed in by the University.
14. The University explained that it has an external work policy which includes work which is closely related to an individual's professional field: '*occasional external work that contributes to citizenship or scholarly development*', particularly '*engagement with business, charities or non-governmental organisations*'. This is the category of external work that Professor Paton undertakes and is '*entirely outside the role for which Professor Paton is employed*'.
15. The University provided a supporting statement from the Professor's Head of School, the Dean of Nottingham University Business School, that these activities are not part of his '*workload as allocated by the University and do not pertain in any way to his contracted role*' and

*'these activities DO NOT fall within his University role but are manifestations of his personal opinion on a matter not related to his work'.*

16. The University went on to describe Professor Paton's academic research interests as the economics of gambling markets, betting, the economics of teenage pregnancy and the economics of cricket. The Commissioner has seen these listed in his public profile on the University's website: <https://www.nottingham.ac.uk/business/people/lizdp.html>
17. The requested information (correspondence on the economics of Brexit) concerns work external to, and entirely separate from, these research interests. The University stated that it *'is a charitable organisation and a public body, and therefore must remain apolitical, so these views can only be the views of Professor Paton as a private individual.'*
18. The University also referred to its policy on electronic mail usage. Professor Paton's use of his University email account for occasional work for the lobby groups fits the 'incidental use of the email system for personal use' detailed in the policy.
19. The University stated that it has *'no use for, or interest in, the information generated by Professor Paton in relation to these matters and does not use it for any purpose. The University is merely providing storage facilities for it for Professor Paton's purposes in line with the personal use provision of its email usage policy.'*
20. The University concluded that it holds the information requested solely on behalf of Professor Paton and does not hold it for FOIA purposes. The engagement with the lobby groups that Professor Paton undertakes is entirely external to his role at the University, as endorsed by the University's external work policy and supported by his Head of School: *'any information that the University holds on these matters is therefore held only on Professor Paton's behalf. That these groups engage in lobbying activity further supports the view that this is solely a private matter for Professor Paton, as it would not be appropriate for the University to adopt a lobbying view on Brexit.'*

#### The complainant's position

21. In correspondence to the Commissioner, the complainant referred to the Upper Tribunal case (University of Newcastle v IC and BUAV [2011] UKUT185 (AAC)) which held that a common sense approach should be adopted and suggested principles to consider. The information was not ultimately disclosed.
22. The complainant also referred to the Commissioner's decision notice ([https://ico.org.uk/media/action-weve-taken/decision-notice/2012/724614/fs\\_50409217.pdf](https://ico.org.uk/media/action-weve-taken/decision-notice/2012/724614/fs_50409217.pdf)) in which the Commissioner

(and the First tier Tribunal) decided that the emails were completely private.

23. The complainant argued that there were a number of reasons why this case was different:

- Whilst the Economists for Free Trade benefits and promotes their members under their academic job titles, the Universities in question often also promote and benefit from the professor's role in the Economists for Free Trade.
- We believe that in this specific case, there is sufficient overlap between the Professors involved in this FOI, their role within the Economists for Free Trade and their role at their respective Universities that the information should be held under the Freedom of Information Act.
- Nottingham University has Professor David Paton listed as an expert in Brexit and promotes him as part of their Expertise Team. The Commissioner has viewed the listing in the Expertise directory – *'Economics and Tax. Professor Paton has done work around EU ref debate, Economics of gambling markets. Betting taxes. Economics of abortion, family planning and teenage pregnancy.'*
- He has acted as an adviser to several government departments including HM Revenue and Customs, DCMS and DTI
- The Nottingham Business School itself has promoted David Paton's Brexit focused work tweeting: *'Professor David Paton claims Britain could benefit from trade agreements with both the EU and a Trans-Pacific Partnership in a post-Brexit deal'*
- Professor David Paton is named as one of 8 university professors in the Economists for Free Trade submission to a Parliamentary enquiry. The complainant states that *'In doing so the professor is clearly writing in his capacity as a professor at the university to increase the credibility of the submission.'*

24. The complainant concluded that the University has promoted the Professor's *'Brexit stance and knowledge so strongly suggests that there is a crossover'* between his role at the university and his activities outside of it and that the emails requested were not completely private and do in fact relate sufficiently to his work duties for the University.

Is the disputed information held by the University?

25. In this case, the main issue is whether or not the information requested (correspondence on the economics of Brexit) is information held by the University for its own purposes.
26. The Commissioner has considered her guidance which lists factors that would indicate that the information is held solely on behalf of another person:
  - the authority has no access to, use for, or interest in the information;
  - access to the information is controlled by the other person;
  - the authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; or
  - the authority is merely providing storage facilities, whether physical or electronic.
27. From her own research, the Commissioner notes that Professor David Paton is employed as Professor of Industrial Economics and Head of the Industrial Economics and Finance Division in the Business School. In his profile he lists many written papers based on his research topics of the economics of gambling, teenage pregnancy and cricket. There are no papers listed under the heading of Brexit.
28. Although the complainant has demonstrated that there are some minor links between the Professor and the comments on Brexit, and there may be some 'crossover', he has not shown the Commissioner any convincing evidence that this is part of his role at the University.
29. The Commissioner is satisfied that the University has demonstrated that any such campaigning or lobbying activity is not part of his allocated workload; that these are his personal views; and that the University has policies that allow staff to undertake external work and to use the IT facilities and email for their personal use.
30. The Commissioner is satisfied that these comments are part of the Professor's external work and not a required part of his role.
31. Based on her guidance the Commissioner considers that:
  - The University has no access to, use for, or interest in the information;
  - Access to the information is controlled by the Professor himself

- The University does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; and
  - The University merely provides electronic storage facilities.
32. Having considered the factors in her guidance and the arguments presented by both parties the Commissioner is satisfied that, on the basis of the evidence presented, the requested information is excluded from FOIA because the information requested was not held for the University's own purposes and therefore falls outside the definition of information held for the purposes of FOIA under section 3(2).

## Right of appeal

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33. 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: 0116 249 4253

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)

34. 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.
35. 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 .....**

**Pam Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**