

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 September 2020

**Public Authority:** Board of Trustees of the University of London

**Address:** Senate House  
Malet Street  
London  
WC1E 7HU

#### Decision (including any steps ordered)

---

1. The complainant requested information about the student records of Taiwanese President Tsai Ing-wen. The Board of Trustees of the University of London ("the University") relied on section 40(2) of the FOIA to withhold the requested information.
2. The Commissioner's decision is that the requested information is President Tsai's personal data and that disclosing it otherwise than under the FOIA would have breached the GDPR principles. The University was therefore entitled to rely on section 40(2) of the FOIA to withhold the information.
3. The Commissioner does not require further steps.

#### Background

---

4. The then-Miss Tsai was awarded a PhD in 1984 by the University which, at that time, conferred degrees on students of the London School of Economics and Political Science ("the LSE") – which did not have its own degree-awarding powers. The original thesis that Miss Tsai submitted has been lost in the intervening years.

## Request and response

---

5. On 26 January 2020, the complainant wrote to the University and requested information in the following terms:

*"[1] Please verify whether the student records as attached provided by Tsai is from LSE, and if yes please advise if the records on the document is identical to the same of the records in LSE registry?"*

*"[2] Please advise whether Tsai's oral exam held on October 16, 1983 was for A) PhD upgrade from M. Phil statud, or B) for PhD qualification examination (Viva)." [sic]*

6. The University responded on 24 February 2020. It stated that it did not consider that element [1] of the request constituted a valid request for information. It withheld the information it held within the scope of element [2] and relied on section 40(2) of the FOIA to do so.
7. Following an internal review the University wrote to the complainant on 21 April 2020. It upheld its original position.

## Scope of the case

---

8. The complainant contacted the Commissioner on 13 May 2020 to complain about the way his request for information had been handled.
9. On 1 July 2020, the Commissioner wrote to the complainant to set out her preliminary view of his complaint. In respect of element [1], she gave her view that the wording of this element did not constitute a valid request for information. She advised the complainant to reword this element and make a fresh request.
10. In respect of element [2], the Commissioner drew the complainant's attention to a recently-issued decision (FS50908339) which found that similar information pertaining to President Tsai's student record was her personal data and that disclosing it would breach the GDPR principles.<sup>1</sup>

---

<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2617860/fs50908339.pdf>

The Commissioner considered that the requested information in this case was sufficiently similar that the same exemption would apply.

11. The complainant rejected the Commissioner's preliminary view and, after a further exchange of correspondence, asked her to issue a decision notice in respect of element [2].
12. Given that the University had set out its position in respect of the exemption clearly in both its response and internal review, as well as the fact that she had recently concluded a comprehensive investigation in respect of case FS50908339, the Commissioner considered that she already had sufficient information to make a decision. She did not therefore seek further submissions from the University – although the University confirmed that it had nothing further to add to its previously stated position. She also did not seek a copy of the withheld information itself, as she considered that it would add nothing to her deliberations.
13. The scope of this notice is to consider whether the University has correctly relied upon section 40(2) to withhold the requested information.

## Reasons for decision

---

14. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
15. In this case the relevant condition is contained in section 40(3A)(a)<sup>2</sup>. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
16. The Commissioner considers it self-evident that the withheld information will be President Tsai's personal data. The request unequivocally identifies President Tsai and any information falling within the scope of the request would clearly be of biographical significance to her.
17. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under

---

<sup>2</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

*Would disclosure contravene principle (a)?*

18. Article 5(1)(a) of the GDPR states that:

*"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".*

19. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

20. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

*Lawful processing: Article 6(1)(f) of the GDPR*

21. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that *"processing shall be lawful only if and to the extent that at least one of the"* lawful bases for processing listed in the Article applies.

22. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

*"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"<sup>3</sup>.*

---

<sup>3</sup> Article 6(1) goes on to state that: -

*"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".*

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that: -

*"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 (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".*

23. In considering the application of this article in the context of a request for information under the FOIA, it is necessary to consider a three-part test: -
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
  - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
  - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
24. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

#### *Legitimate interests*

25. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, the narrower, more trivial and more personal the interests, the less likely it is the such interests will outweigh the rights of the data subjects.
26. The complainant drew to the Commissioner's attention the controversy surrounding President Tsai's thesis. He argued that there was a public interest in understanding how President Tsai had come by her PhD, given that she made frequent reference to her degree.
27. This is not the first time that the Commissioner has had to deal with requests related to President Tsai. In addition to the complaint referenced both above and below, she also reached a decision in respect of two complaints made about the LSE itself.<sup>4</sup>
28. The Commissioner finds it somewhat difficult to describe the "fake degree/thesis" theory as it lacks coherence. In broad terms, the theory

---

<sup>4</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2618008/fs50898869.pdf>

alleges that the University or the LSE (the “corrupt” institution varies from allegation to allegation) conspired in 1984 to award the then-Miss Tsai a PhD to which she was not entitled – presumably for the express purpose of manipulating the Taiwanese presidential elections of 2016 and 2020 – and is now trying to cover its tracks. Another alternative theory is that the PhD was never conferred and President Tsai has simply invented it. According to this version, the LSE and/or the University have conspired to fabricate the original records (and the degree award) to either curry favour with government of Taiwan or to increase their own prestige by associating themselves with a head of government.<sup>5</sup>

29. Whilst the Commissioner does not consider that the keenest “fake thesis” theory supporters would be “satisfied” by any information that the University could produce, she does accept that information of this type would shed some light on the way that the University previously awarded degrees and whether, in this particular case, that process was followed correctly – especially given President Tsai’s prominent role in public life.

*Is disclosure necessary?*

30. ‘Necessary’ means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
31. The Commissioner considers that there is other documentary evidence supporting the University’s contention that the PhD award was correct. However, she notes that the procedures for assuring the quality of degree courses and awards were less stringent during the 1980s. For the sake of completeness, she has therefore gone on to conduct a balancing test.

*Balancing the legitimate interest against the rights and freedoms of the data subject*

---

<sup>5</sup> The Commissioner also notes that President Tsai has filed a defamation suit against individuals who have questioned the authenticity of her PhD and thesis.

32. The Commissioner considers that the negligible legitimate interests in this case are considerably outweighed by President Tsai's right to privacy.
33. Whilst individuals holding prominent roles in public life should have a reasonable expectation that they will receive lower levels of privacy than ordinary people, the Commissioner does not consider that such individuals have forfeited any rights to privacy.
34. President Tsai has not given her consent to the disclosure of this information (as far as the Commissioner is aware). The University is not obliged to seek President Tsai's consent and President Tsai is under no obligation whatsoever to give consent. The Commissioner considers that President Tsai would have a reasonable expectation that her student records would remain private – as would the records any other student graduating in that year.
35. If the University were to disclose President Tsai's personal data it would be doing so without her consent and contrary to her reasonable expectations. The Commissioner considers that this would cause considerable distress.
36. The Commissioner notes that President Tsai is listed on the 1984 degree list as having been awarded a PhD. The title of her thesis is also listed in the Institute of Advanced Legal Studies (IALS) catalogue for 1984-85.
37. Given that contemporaneous records exist demonstrating that a PhD was conferred upon President Tsai (undermining the argument that the PhD was created at a later date), in order for the "1984 conspiracy" to make sense, the Commissioner is being asked to attribute extraordinary powers of foresight to the University. In order for the "fake thesis" theory to make sense, the University must have considered the then-Miss Tsai to have been so remarkable a student that it was worthwhile disregarding the usual safeguards of academic integrity so that in thirty years' time she would be more likely to win a presidential election. The Commissioner considers such a proposition to be fanciful at best.
38. The Commissioner further notes that the fact that the then-Dr Tsai was not successful in the 2012 Taiwanese presidential election – despite presumably claiming to have received a PhD – would suggest that her status as a PhD graduate has had minimal influence on the Taiwanese electorate. She therefore considers that the withheld information would be of minimal relevance to President Tsai's professional life.
39. The relatively small amount of information that the public at large would learn about academic standards in the 1980s (standards which have moved on considerably in the intervening years) does not, in the

Commissioner's view, come close to justifying the intrusion into President Tsai's private life that would also result from disclosure.

40. The Commissioner is therefore satisfied that no lawful basis exists for the processing of this personal data and its disclosure would thus be unlawful. The University is therefore entitled to rely on section 40(2) of the FOIA to withhold this information.



## Right of appeal

---

41. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

42. 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.
43. 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** .....

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