

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 March 2021

Public Authority: The Council of University College London
Address: Gower Street
London
WC1E 6BT

Decision (including any steps ordered)

1. The complainant has requested the research information referred to in the Black Lives Matter message from the Dean of the Faculty of Brain Science in June 2020.
2. The Council of University College London (UCL) initially stated that it did not hold the requested information. However, following the intervention of the Commissioner, UCL confirmed that it did hold information relevant to the request, but was withholding it under the exemption provided by section 22(A) of the FOIA (research).
3. The Commissioner's decision is that UCL has not complied with its obligations under section 1(1), section 10(1), section 16(1) or section 17(1) of the FOIA. As explained in paragraphs 19 – 21 of this decision notice, the Commissioner has not gone on to consider UCL's reliance on section 22(A) in this decision, as this does not form part of the complainant's complaint.
4. The Commissioner does not require UCL to take any steps as a result of this decision notice.

Request and response

5. On 18 September 2020, the complainant made the following request for information from UCL:

"I request FOI access to the research information mentioned on this page <https://www.ucl.ac.uk/brain-sciences/news/2020/jun/black-lives-matter-message-dean-faculty-brain-sciences> specifically

'Research within the Faculty has shown racial bias against our colleagues within recruitment practices'

6. UCL responded on 19 October 2020 stating that it did not hold the requested information.
7. The complainant requested an internal review on 19 October 2020.
8. Following an internal review, UCL wrote to the complainant on 4 November 2020 maintaining its original position.

Scope of the case

9. The complainant initially contacted the Commissioner on 17 October 2020 to complain about UCL's failure to respond to his request for information.
10. The Commissioner wrote to both UCL and the complainant on 30 October 2020, instructing UCL to provide a response to the request within 10 working days.
11. The complainant responded to the Commissioner on 31 October 2020, providing her with a copy of UCL's 19 October response to the request and his request for internal review.
12. The Commissioner therefore wrote to the complainant on 4 November 2020, advising him to await the outcome of his internal review request.
13. The complainant responded to the Commissioner on the same day, providing a copy of UCL's internal review decision. The complainant advised that he remained dissatisfied with UCL's response to his request and stated his belief that *"it is entirely improper for a public body to refer to its internal research on its website and then bluntly deny the information exists without explanation when asked to provide it."*
14. In line with her usual practice, the Commissioner wrote to UCL on 9 December 2020 asking it to revisit the request and provide her with its full and final arguments in support of its position.
15. UCL provided its submission to the Commissioner on 8 January 2021, confirming that it had incorrectly interpreted the request and that it did in fact hold some relevant information. However, UCL advised that it believed the information it held was exempt from disclosure under section 22(A) of FOIA, as it was research information intended to be published at a later date.

16. The Commissioner wrote to UCL on 13 January 2021, asking it to write to the complainant explaining its revised position.
17. The Commissioner also wrote to the complainant on 13 January 2021, explaining that UCL had informed her that it had revised its position in relation to the request and that she had asked UCL to write to him to explain its revised position. The Commissioner advised the complainant to contact her if he remained dissatisfied with UCL's response to his request.
18. The complainant responded to the Commissioner on 16 January 2021, before seeing UCL's revised response, requesting a decision notice in relation to what he considered to be UCL's unlawful conduct to date.
19. UCL wrote to the complainant with its revised position on 25 January 2021. It confirmed to the complainant that it held information falling within the scope of his request, but that it was withholding the information on the basis that it had been obtained in the course of, or was derived from, an ongoing programme of research which was continuing with a view to the publication of a report of the research.
20. Following receipt of UCL's revised response, the complainant wrote to the Commissioner again on 25 January 2021, advising that he remained dissatisfied and required a decision notice in relation to UCL's conduct. The complainant stated that if UCL had provided its revised response in October, in which it confirmed the existence of this research information, he could have used this to obtain a disclosure order from the employment tribunal in order to obtain the information for use in a witness statement.
21. As the complainant's concern does not appear to be UCL's application of section 22(A), but rather UCL's failure to confirm the existence of the requested information at the time of his request, the Commissioner therefore considers that the scope of this case is to determine whether UCL complied with its obligations under section 1(1), section 10(1), section 16(1) and section 17(1).

Reasons for decision

22. Section 1(1) of the FOIA says that an individual who asks for information from a public authority is entitled to (a) be informed whether the authority holds the information and (b) if the information is held, to have that information communicated to them.

23. Section 10(1) of the FOIA says that a public authority should comply with section 1(1) promptly and no later than the twentieth working day following the date of receipt.
24. Section 17(1) of the FOIA states that where a public authority refuses a request for information, it must provide the applicant with a refusal notice explaining the exemptions relied upon and explain why they apply (if not apparent), no later than 20 working days after the date on which the request was received.
25. In the circumstances of this case, the total time taken by UCL to confirm that it held information falling within the scope of the request and provide the complainant with a refusal notice exceeded 20 working days. The Commissioner therefore considers UCL to have breached section 1(1), section 10(1) and section 17(1) of the FOIA in this case.

Section 16 – advice and assistance

26. Section 16(1) of the FOIA says that a public authority has a duty to provide advice and assistance to an applicant, so far as it would be reasonable to expect the authority to do so.
27. The duty to provide advice and assistance arises in certain situations. These are broadly:
 - a) before an applicant has submitted a request for information and is, for example, clarifying with the public authority what information it holds;
 - b) if a request for information is not clear to the public authority;
 - c) if complying with a request would exceed the appropriate cost limit under section 12 of the FOIA, a public authority should, if it is reasonable to do so, offer the applicant advice and assistance to refine the request so that it can be complied with within the cost limit; and
 - d) if a public authority does not hold relevant information itself but can advise the applicant of another organisation that would hold it.
28. In its submission to the Commissioner, UCL explained that it incorrectly interpreted the complainant's request for information. It went on to explain that, at the time of its response to the request and its internal review response, UCL interpreted the request to be referring specifically to staff because the requester used the term 'colleagues' in his request, and that the information it held at that stage related to PhD students.

29. UCL advised the Commissioner that it was now of the opinion that it should have advised the requester under its section 16 duty, that some information was held by UCL but clarified that it related to PhD students, and allowed the requester to determine whether it was of use or not.
30. Whilst UCL does not appear to be saying that it considered that there was a possible alternative reading of the request, the Commissioner wishes to stress that the first duty of a public authority should be to make sure that it had the correct objective reading of the request to avoid any issues at a later point.
31. The Commissioner therefore finds that UCL breached section 16(1) of the FOIA.

Other matters

32. In his representations to the Commissioner, the complainant stated his belief that UCL's initial misinterpretation of his request (and resultant failure to confirm what information it held) was an intentional act to prevent him from accessing information that would have been of assistance to him in tribunal proceedings that he was involved in. The complainant explained that confirmation of the existence of this information would have allowed him to pursue its release via a tribunal disclosure order.
33. Whilst the Commissioner notes the complainant's concerns, she has not been provided with evidence to suggest that UCL's failure to respond correctly at the time of the request was in any way deliberate.
34. Furthermore, whilst the Commissioner is not in a position to comment on tribunal procedures in detail, it is her understanding that any order to disclose information by the tribunal would not be reliant on confirmation of the information's existence under the FOIA. She therefore does not consider this to be a relevant factor to this decision notice.

Right of appeal

35. 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

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

36. 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.
37. 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

Pamela Clements
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