

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 September 2021

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 relating to the student record of current Taiwanese President, Tsai ing-wen. The Board of Trustees of the University of London ("the University"), withheld some information, relying on section 40(2) of the FOIA (third party personal data) to do so. It denied holding the remaining information.
2. The Commissioner's decision is that University has correctly relied upon section 40(2) in respect of some of the information it is withholding, but not all. She also considers that the University holds no further information within the scope of the request. In failing to inform the complainant of the information it did and did not hold at the time of the request, the University breached section 10 of the FOIA.
3. The Commissioner requires the University to take the following steps to ensure compliance with the legislation.
 - Disclose, to the complainant, copies of the withheld information that it described to the Commissioner as categories A and B. Except that:
 - The University may redact the names of the senders and recipients (including cc'd recipients) of each email (including where the name appears in the email address itself)
 - The University may redact the names of the individuals referred to in the body text (apart from President Tsai's name)

- The University may also redact job titles and other contact details where it is necessary to prevent the office holder from being identified – however, it should retain sufficient information to show the institution the individual represents.
4. The University must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. 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 President Tsai submitted has been lost in the intervening years.

Request and response

6. On 14 September 2020, the complainant requested information of the following description:

"Please provide the following record as required under the Freedom of Information Act 2000.

[1] The attached file #1 is a copy of the 2019-2020 "Examination Entry form for Mphil/PhD examination" downloaded from the LSE website, please provide a copy of similar entry form for LSE PHD degree in laws for 1983-1984.

[2] The attached file #2 is a copy of the 2019-2020 "Guidelines on nominating examiners for MPhil and PhD examinations For use when completing the Examination Entry form" downloaded from the LSE website, please provide a copy of similar guidelines for 1983-1984.

[3] The "LSE statement on PhD of Dr Tsai Ing-wen" made on 08 October 2019 (available at <http://www.lse.ac.uk/News/Latest-news-from-LSE/2019/j-October-2019/LSE-statement-on-PhD-of-Dr-Tsai-Ing-wen>) states that "[t]he Senate House Library records confirm

that a copy was received and sent by them to the Institute of Advanced Legal Studies (IALS)."

- [a] Please provide copies of the above mentioned Senate House Library records that confirm that a copy of Ms. Tsai's thesis was received and sent by the Senate House Library to the IALS, including but not limited to the date the copy was received by the Senate House Library, and the date the copy was sent by the Senate House Library to the IALS.*
 - [b] Please provide copies of the above mentioned Senate House Library records showing the party who sent the copy of Ms. Ing-wen Tsai's thesis to the Senate House Library. Was it Ms. Tsai herself? Or Ms. Tsai's representatives in any capacity, or a third party?*
 - [c] Please provide copies of all IALS's records showing the time when the above mentioned copy of Ms. Tsai's thesis sent by the Senate House Library was received by the IALS.*
 - [d] Regarding the receipt and delivery of the copy of Ms. Ing-wen Tsai's PhD thesis, please provide copies of all internal and external communications, correspondences, meeting minutes, emails, notes, recordings of telephone conversations and CCTV recordings, and all other records at the time, between and within the Senate House Library and the IALS, and between the Senate House Library and the party who submitted the copy of Ms. Tsai's PhD thesis.*
 - [e] Regarding this statement, please provide copies of all internal and external communications, correspondences, meeting minutes, emails, notes, recordings of telephone conversations and CCTV recordings, and all other records at the time, between the Senate House, the Senate House Library and the IALS, and between the University of London and the LSE.*
- [4] The "LSE statement on PhD of Dr Tsai Ing-wen" made on 08 October 2019 states that "We can be clear that the records of LSE and of the University of London-the degree awarding body at the time-confirm that Dr Tsai was correctly awarded a PhD in law in 1984."*

[a] Regarding confirmation of Tsai's PhD in law in 1984, please provide a copy of the itemized records that confirmed that Dr Tsai was correctly awarded a PhD in law in 1984.

[b] Regarding LSE's statement that the University of London's records confirmed Tsai's PhD in law in 1984, please provide copies of all internal and external communications, correspondences, meeting minutes, emails, notes, recordings of telephone conversations and CCTV recordings, and all other records between the University of London and the LSE.

[5] Ing-wen Tsai posted three documents from her student record on Facebook on 4 September 2019 (available at <https://www.facebook.com/presidentialoffice.tw/photos/pcb.2429761177247604/2429760790580976/>). Regarding providing these documents to Tsai, please provide copies of all internal and external communications, correspondences, meeting minutes, emails, notes, recordings of telephone conversations and CCTV recordings, and all other records between the University of London and the LSE and between the University of London and Tsai and/oror [sic] Tsai's representatives in any capacity.

7. On 13 October 2020, the University responded. It provided some information and denied holding some of the requested information – but confirmed it held the remainder. However, the University refused to provide the remaining information and relied on section 40(2) of the FOIA in order to do so.
8. The complainant requested an internal review on 3 December 2020. The University completed an internal review and upheld its original position – although it provided some clarity as to which information it held and which it did not.

Scope of the case

9. The complainant contacted the Commissioner on 23 January 2021 to complain about the way her request for information had been handled.
10. The Commissioner considers that the scope of her investigation is to determine whether the University is entitled to rely on section 40(2) of the FOIA in the manner that it has done and whether it holds further information within the scope of the request.

Reasons for decision

Section 40(2) – third party personal data

11. 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.
12. In this case the relevant condition is contained in section 40(3A)(a) . 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').
13. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
14. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

15. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
17. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
18. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
19. The University has withheld three categories of information which it helpfully described as categories A, B and C. Category A is a document containing several email chains involving representatives from the

University and the LSE as they tried to establish why they could not locate an original copy of President Tsai's thesis – this is the information the University holds within the scope of elements [3a, b, c, d and e] of the request. Category B contains email chains circulated within and between the University and LSE as they discussed the content of the public statement (this covers element [4b] of the request). Finally, category C contains three documents from the then-Miss Tsai's student records (element [4a]).

20. Having considered all of the withheld information, the Commissioner does not consider that the information within either category A or B is personal data. Whilst the information does contain the names and contact information of the officers involved in the discussions, once these are removed, the emails do not identify those individuals and they therefore cease to be personal data.
21. The University did not attempt to suggest that this information would be President Tsai's personal data. The Commissioner agrees that it was correct not to do so.
22. The fact that the original copies of President Tsai's thesis have gone missing is already in the public domain. The steps that the University and the LSE have taken in order to locate the missing thesis do not involve President Tsai and the emails do not indicate that she had any involvement in (or even knowledge of) what was happening. Therefore the emails cannot reasonably be said to be relevant to any decision involving President Tsai. She is not the subject of these emails – her thesis is. The Commissioner is thus satisfied that the emails have insufficient connection to President Tsai to be her personal data.
23. The Commissioner is therefore ordering disclosure of all of these emails – subject to the redactions of names. The individuals are not of a particularly senior or public-facing role and would not expect their names to be disclosed. Disclosure of the names would add nothing to the overall understanding of the issues involved.
24. However, in respect of category C, the Commissioner is satisfied that the information relates to President Tsai and that, given the wording of the request, no amount of redaction could anonymise the documents. She is satisfied that this information both relates to and identifies President Tsai. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
25. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

26. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

27. 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."

28. 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.

29. 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.

30. 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.

31. 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"¹.

¹ 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".

32. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-
- **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
33. 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

34. A wide variety of interests can be legitimate interests. They can be specific or general, public or private, compelling or trivial. Whilst the Commissioner considers that there will almost always be a broad interest in transparency, in general, the less specific the interest, the more trivial it is and the more personal it is to the requestor, the less likely it is that the interest in publication will outweigh the rights of the data subject.
35. The complainant did not advance any arguments of her own to suggest what legitimate interest she may have in the information (although the Commissioner notes that the complainant was under no obligation to suggest one).
36. The Commissioner does not accept that verifying the authenticity of President Tsai's PhD is a legitimate interest – as there are other contemporaneous records demonstrating that the degree was awarded. The Commissioner considers that reasonable people will learn very little about that matter from the withheld information that has not already been placed into the public domain. She also considers that those who refuse to accept the authenticity of the documents that have already been published would likely raise similar objections to any other documents that the University discloses. This does not provide a legitimate interest in disclosure.
37. Nevertheless the Commissioner 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 the prominent role that President Tsai now holds in public life.

Necessity test

38. 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.
39. 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 test

40. Having considered the particular circumstances, the Commissioner has concluded that the legitimate interest in disclosure does not outweigh the rights of President Tsai.
41. As a general rule, the more prominent a position an individual has in public life, the lower the level of privacy they should expect – although that expectation will never disappear altogether.
42. In its submission, the University drew attention to the fact that this qualification was awarded prior (in fact some 30 years prior) to Dr Tsai first being elected as Taiwan's president and that a PhD was not a pre-requisite of the office (or, indeed, any public office):

"Students will have a high expectation that records of their registration and the attendance at the University, which may reference a number of factors relating to their professional and personal life, would not be subject to public disclosure. Even in the case of a PhD thesis, where there is an expectation that the thesis would be publicly available – and therefore the qualification publicly acknowledged – there is no expectation that further records of assessment would be disclosed. The nature of the disclosure has impact for the University's position on the privacy and confidentiality of all its student records.

"The University has thousands of graduates. Many have progressed to positions of power and influence in public life. A PhD thesis is not a professional requirement for a public career and is not analogous to a scenario such as surgeon and a medical degree. The graduate in question here was not elected to public office at the time they were a registered student."

43. The complainant did not advance any specific arguments as to why any legitimate interests in disclosure would outweigh President Tsai's rights and freedoms (although she was under no obligation to do so).
44. However, when considering the University's response to part [5] of the request, the Commissioner noted that the complainant had drawn attention to documents posted on Facebook.
45. The documents in question were uploaded to the official page of the Presidential Office. These include a copy of the letter from the University of London, confirming the conferment of the degree and an extract from President Tsai's student record.
46. The Commissioner considered whether, in disclosing these records, President Tsai has voluntarily waived her right to privacy. She concluded that this is not the case.
47. Whilst the withheld information contains some of the same information that is in the public domain (and some generic information that would have been provided to all contemporary students), the Commissioner still considers that the documents themselves (and the fact that they exist) are not in the public domain.
48. The withheld information does not contain anything that, in the Commissioner's view, would undermine anything that either President Tsai, her Office, the University or the LSE has said or published. Therefore, the Commissioner does not consider that this is a case where there has been a selective disclosure of information to paint a partial and misleading picture. Indeed, the Commissioner considers that the withheld information merely reinforces what has already been said.
49. Nothing in the withheld information indicates that this particular degree was not correctly awarded – or that any undue influence was applied to the process in any way.
50. Any further disclosure of records would be contrary to President Tsai's reasonable expectations. President Tsai has a reasonable expectation that her student records should remain a matter between her, the University and the LSE. She has already voluntarily placed information in the public domain (which she was under no legal obligation to do) and she is entitled to draw a line to protect her own privacy.
51. The information that a person would learn about the workings of the degree system in the 1980s would be fairly negligible – and of little wider public interest, given the changes in the higher education in the intervening 30 years. This does not provide a compelling justification for trampling over President Tsai's rights and freedoms as a data subject.

52. The Commissioner is therefore satisfied that the University has correctly relied on section 40(2) of the FOIA to withhold the information within category C.

Section 1 – held/not held

53. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

54. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
55. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
56. The University has argued that it holds no information within the scope of elements [1], [2] and [5].
57. In respect of elements [1] and [2], the University argued that it did not hold copies of the documents involved. Given their age and the fact that they will have been superseded by multiple newer versions, the Commissioner considers that it would be inherently unlikely that the LSE would retain copies of such documents.
58. The complainant argued that the University could simply provide her with a copy of a real form within the scope of element [1], but redact the personal information. Even if the University still retained such records, the Commissioner considers that a redacted record is not the same as a blank one. The complainant put forward no arguments to suggest why the University still ought to hold information within the scope of element [2].

59. In respect of element [5], the University noted that one of the three documents had been produced by the LSE. As the LSE is a separate legal entity, there would be no requirement for the University to be involved with the provision of this document. Of the remaining two documents, it noted that the letter had not been retained in the student file. Finally, it noted that it did not retain hard copies of students' certificates – only the record showing who achieved what qualification.
60. Nevertheless, the University confirmed that it had carried out searches of both its paper and electronic files. It was not aware of any relevant documents that had been destroyed. The only files it held within the scope of the request were those which form the withheld information.
61. The Commissioner is satisfied that, on the balance of probabilities, the University has identified all the information it holds. Given that emails and CCTV were not in widespread use in the UK until at least the late 1980s, it seems unreasonable to suppose that the University would hold information from that period in such a form. It seems equally unlikely that sending a relatively straightforward letter confirming the award of a degree would necessitate an assortment of meetings and correspondence beyond that which is contained in the withheld information.
62. Whilst the Commissioner appreciates that, in explaining why further information *ought to be* held, the complainant has not had the benefit of being able to view that information which *is* held. Nevertheless, the Commissioner is satisfied that there is nothing to suggest that the University holds additional information beyond that which it has already disclosed and that which it has withheld in this case.
63. The Commissioner thus considers that the University has complied with section 1(1) of the FOIA in responding to this request.

Procedural Matters

64. Section 10 of the FOIA states that a public authority must comply with its section 1(1) duties "*promptly and no later than the 20th working day following the date of receipt.*"
65. The Commissioner notes that, whilst the University did respond to the request within 20 working days, its response was deficient, because it did not distinguish clearly between information that it did not hold and information that was exempt. The Commissioner therefore records a breach of section 10 of the FOIA in the handling of this request.

Right of appeal

66. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

67. 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.
68. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF