

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 30 November 2021

**Public Authority:** The Council of the University of Cambridge  
**Address:** University Offices  
The Old Schools  
Trinity Lane  
Cambridge  
CB2 1TN

### **Decision (including any steps ordered)**

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1. The complainant has requested from the University of Cambridge (the university) information in the form of peer reviewed academic studies that reached a certain conclusion about persons with a high level of perceptual reasoning. The request was one of three submitted in the same month. The university initially refused the requests as not valid under the FOIA. At review, the requests were refused under section 12 (exceeding the fees limit) and section 14 as a "grossly disproportionate burden".
2. The Commissioner's decision is that the university was correct to cite section 12. She also finds that the university did not breach section 16(1).
3. The Commissioner does not require the university to take any further steps.

## Request and response

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4. The complainant made three requests for information under the FOIA to the university in February 2021 –

Firstly, on 5 February 2021:

*"I am writing this email as a freedom of information request*

*The department of psychology will have carried out studies into groups as part of their research into autism.*

*It will be noted that Dyslexic people are good at inventions  
<https://thecodpast.org/2015/07/top-5-dyslexic-inventors/>  
<https://www.dyslexia.com/about-dyslexia/dyslexic-achievers/all-achievers/> <https://interestingengineering.com/11-famous-engineers-you-didnt-know-were-dyslexic>*

*But they are worse at pattern recognition than the general population*

*[https://escholarship.org/content/qt5g49t2s6/qt5g49t2s6\\_noSplash\\_456d84739dfb589886f14e6e09271ff0.pdf](https://escholarship.org/content/qt5g49t2s6/qt5g49t2s6_noSplash_456d84739dfb589886f14e6e09271ff0.pdf) (Page 15)*

*That being the case, can you perhaps explain why someone within the department of psychology, [named academic], published a book which states incorrectly that pattern recognition is responsible for invention when 1) This is clearly not the case. 2) It has to do with field independence/dependence 3) Such claims (sic) will hold back people on the spectrum.*

*There will of course be documentation showing his considerations of the above."*

On 9 February 2021:

*"This constitutes a freedom of information to the Department of psychiatry at the University of Cambridge. Do you have any information (in the form of academic studies which are peer reviewed obviously) that a person who currently has a high level of perceptual reasoning (or organization), as measured by the Weschler Acquired Intelligence Scale or the Stanford Binet, can be said to be suffering from a mental health condition."*

Finally, on 25 February 2021:

“This is a freedom of information request.

What was the level of perceptual reasoning used to ascertain the conclusions drawn in the following study

[https://www.cam.ac.uk/research/news/artificial-brain-reveals-why-we-cant-always-believe-our-eyes?utm\\_campaign=research&utm\\_source=twitter](https://www.cam.ac.uk/research/news/artificial-brain-reveals-why-we-cant-always-believe-our-eyes?utm_campaign=research&utm_source=twitter)”

5. The university responded on 3 March 2021 to all three requests, stating that they did not fall under the FOIA.
6. The complainant requested a review on the same day expressing his view that the only logical conclusion was that the information was not held by the university.
7. The university provided an internal review on 25 March 2021 in which it revised its position, stating that the requests could conceivably fall under the FOIA. However, it cited both section 12(1) – cost of compliance and section 14(1) – vexatious request on the grounds that to respond would impose a “grossly disproportionate burden” on the university.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 26 March 2021 to complain about the way his request for information had been handled.
9. The Commissioner wrote to the university on 15 September 2021 with her investigation letter. She later spoke to the university on 29 October 2021 to express her view that two of the requests were not valid, essentially agreeing with the university’s initial response regarding requests one and three. However, she still required a response regarding request two which she had concluded fell under the FOIA.
10. The university confirmed its position regarding request two in a telephone conversation on 2 November 2021 – that it considered it to exceed the fees limit.
11. On 3 November 2021, the Commissioner wrote to the complainant setting out her view that two parts of his request were not valid under section 50 FOIA. For example, the complainant’s first request asks for explanations about conclusions that an academic author had made and his third request asked for an assessment to be made about the level of perceptual reasoning used to reach certain academic conclusions. In

effect, the complainant is asking for an opinion or judgement that is not already recorded but would have to be created.

12. On 4 November 2021, the complainant accepted that he would not be pursuing requests one and three but wished to continue the investigation regarding his second request.
13. Therefore, the Commissioner considers the scope of the case to be the university's citing of section 12(1) and section 14(1) to the second request.

## **Reasons for decision**

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### **Section 12 – cost of compliance exceeds the appropriate limit**

14. Section 12(1) of the FOIA states that:

*"(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."*

15. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations'). The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour. This means that in practical terms there is a time limit of 18 hours in respect of the university. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) of the Fees Regulations states that an authority can only take into account the costs it reasonably expects to incur during the following processes:
  - determining whether it holds the information;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
16. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required.

However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence".<sup>1</sup>

### **The complainant's view**

17. The complainant addressed himself mainly to the fact that the university had stated that answering the request would be a "disproportionate burden". He provided some background information that cannot be repeated here as it is personal data from which it may be possible to identify the complainant. What follows is necessarily a limited and non-academic precis of the factors that led the complainant to assert that this request should not have been refused.

18. The complainant states that he is trying "to find any studies which show an individual with a high level of perceptual reasoning can be said to be experiencing mental ill health". He contacted, amongst others, a specific academic to establish if there was any evidence. He states that,

*" 1. All of the studies, without exception, demonstrate that an individual with mental health difficulties will either experience a decline in measures of perceptual reasoning or indeed will not have a high level of perceptual reasoning. There is no evidence which shows that an individual with a high level of perceptual reasoning can be said to be experiencing mental ill health. "*

19. He asserts that no individual was able to provide any information to the contrary. The complainant's conclusion is that,

*"...the science shows that an individual with a high level of perceptual reasoning cannot be said to be experiencing mental ill health."*

20. The complainant suggests that the university should be able to provide scientific counter evidence which he believes is readily available. He does not accept that to do so would be a disproportionate burden. His view is that this "information should be readily available" given that the

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<sup>1</sup> <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>  
(para 12)

university *"would like to allege that it is at the forefront of scientific research with particular respect to medicine"*. His opinion is that the university is disregarding scientific evidence and his conclusion is that it does not hold such information and is using excuses not to confirm this by claiming that it is a burden. He does not believe this to be a valid position. The complainant says that his request is a matter of public interest and not vexatious. He considers the university's response to be a political decision and *"contrary to scientific interest"* and the *"national interest"*.

### **The university's view**

21. The university provided two responses to the Commissioner, one when it had aggregated the three requests for the purpose of section 12(1) and a second after the Commissioner had agreed that two of the requests fell outside the FOIA.
22. The university explains that the request, *"is exceptionally diffuse"* and would appear to have *"few obvious limiting factors other than mentioning the Department of Psychiatry"*. The university states that the Department has *"significantly in excess of 100 members of staff"*<sup>2</sup>.
23. The academic studies that are peer reviewed would not only be accessible to this department but to recorded information held by the university which would *"comprise records held within various university libraries, electronic journal resources and research repositories"*. It would include any and all records held by the academic and research staff in the Department of Psychiatry. The university underpins its argument by stating that,  
  

*"...it is almost impossible to know how to determine whether any recorded information within scope might be held with regard to this request because its phrasing does not relate in any way to University record-keeping systems."*
24. The university did not conduct any specific search sampling exercises because it contends that the language and nature of the request do not make it possible to do so. Any such search could not be carried out by a member of the administrative staff but would have to be conducted by someone with a certain degree of specialist scientific knowledge in order that they could engage with the arguments made by the complainant

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<sup>2</sup> <https://www.psychiatry.cam.ac.uk/people/>

and the research activities, to be able to determine whether any information within scope is held.

25. After the Commissioner had expressed her view that the university was correct in its view (in respect of requests one and three) that they were not valid requests, it confirmed its position that the second request was *"by far the most wide-ranging of the three"*. It also stated that it was primarily citing section 12(1) with regard to this request. The university has estimated that it would take significantly in excess of 18 hours of staff time to determine whether any information falling within the scope of the request was held. The necessary searches would be *"incredibly far-reaching and would need to be undertaken by a member of staff with some understanding of the scientific concepts involved"*.

### **The Commissioner's view**

26. Section 1 FOIA states the following:

*"(1)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,"*

27. Section 12 says,

*"(1)Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.*

*(2)Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit."*

28. The Commissioner has concluded that section 12(2) is the appropriate part of section 12 to cite regarding this request. Although the university did not specifically cite section 12(2), it did say in its internal review, *"that to determine the extent to which the information is or is not held itself (sic) would itself exceed the appropriate limit"*.
29. The reason why she has reached this conclusion is due to the unusual nature of this request. This information may or may not be held by the university but she accepts that the time taken to establish this would exceed the fees limit for the reasons provided by the university. The

sheer scope of the request in terms of the individuals concerned, the possible repositories that might hold the information, and the specialist knowledge that would be required to conduct such a search, means that the Commissioner accepts that it would exceed the fees limit for the university even to establish whether it holds the requested information.

30. As the Commissioner has decided that section 12 has been appropriately cited, she has not gone on to consider section 14.

### **Section 16 – duty to provide advice and assistance**

31. The university's refusal notice did not provide advice and assistance to the complainant, possibly because it did not accept that the request was valid under the FOIA. However, the Commissioner's guidance states:

*"The Commissioner interprets this duty broadly. For example, if you receive a request which you believe is not valid for FOIA purposes, you should consider what advice and assistance you can provide the applicant to help them bring the request within technical compliance of FOIA."<sup>3</sup>*

32. At internal review, the university did not provide advice and assistance, concentrating on the aggregation of the three requests and maintaining that section 12 and section 14 applied.
33. However, she notes that the complainant had been clear when asking for a review that he wanted to know if the information was held or not held. He also argued that the university could not claim an exemption that did not exist or that the requests did not fall under the FOIA. His view was that there was no reason not to provide the information and that the only logical conclusion he could draw is that the university did not hold this information.
34. After the Commissioner wrote to the university, it did not outline to the Commissioner the reasons why it had not provided advice and assistance to the complainant as was its duty under section 16(1) FOIA.
35. The Commissioner agrees that requests one and three are not valid requests under the FOIA. However, request two is a valid request. Having accepted that section 12 applies to this request, the

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<sup>3</sup> [Section 16 – Advice and Assistance | ICO](#)



Commissioner has considered whether meaningful advice and assistance could have been offered to the complainant.

36. It is nearly always possible for a public authority to suggest limiting a request such as by timeframe. However, her conclusion is that the complainant was attempting to prove the absence of information and that the Commissioner finds it hard to conclude that the university could have provided any meaningful advice and assistance:

*"...there will be occasions when there are no obvious alternative ways of restating the request, which will limit your ability to help the applicant narrow it down."<sup>4</sup>*

37. The Commissioner believes this is one such occasion. She does not consider that the request could be refined to bring it within the cost limit. Therefore she has not recorded a breach of section 16 FOIA and does not require the university to take any further steps.

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<sup>4</sup> Ibid

**Right of appeal**

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

39. 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.

40. 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 .....**

**Janine Gregory  
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Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
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SK9 5AF**