

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 April 2023

Public Authority: Governing Body of the University of Oxford
Address: University Offices
Wellington Square
Oxford
OX1 2JD

Decision (including any steps ordered)

1. The complainant has requested information about an anonymous donation. The above public authority ("the public authority") relied on sections 43 (commercial interests) and 40(2) of FOIA (third party personal data) in order to withhold the information.
2. The Commissioner's decision is that the public authority has correctly relied on section 40(2) of FOIA to withhold some information. Of the information that does not engage section 40, some engages section 43 and the balance of the public interest favours maintaining the exemption. The remaining information that has been identified does not engage either exemption. The public authority also holds more information than it originally identified and has therefore not complied with section 1 of FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the information specified in the confidential annex.
 - Either disclose a copy of the redacted part of Appendix One or issue a refusal notice that complies with section 17 of FOIA.
4. The public authority 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.

Request and response

5. On 20 June 2022, the complainant wrote to the public authority and requested information in the following terms:

“In 2018, Oxford University announced that it received a £10 million donation from the British Foundation for the Study of Azerbaijan and the Caucasus (BFSAC...I would like to request the following information:

 - 1) Please disclose the ultimate source of the £10 million funding. Please provide their full name.
 - 2) All correspondence and communications held by the donations review committee in relation to the £10 million donation.”
6. The public authority responded on 18 July 2022. It relied on section 40(2) of FOIA to withhold the requested information. It upheld this stance following an internal review – although it additionally confirmed that the person making the donation did not hold a government position and was not subject to international financial sanctions.

Reasons for decision

Section 1 – scope of the request

7. During the course of the investigation, the public authority provide the Commissioner with a copy of the information it was withholding. This contained a substantial amount of redaction which, the public authority argued, had been made because the information did not relate to the donation in question.
8. The Commissioner asked to be provided with a completely unredacted copy of the information. He noted that the structure of the document that had been provided appeared to indicate that, whilst the redacted information might not be immediately concerned with the donation in question, it had clearly formed part of the public authority’s considerations as to whether to accept that donation. Consequently, it was his provisional view that the information would fall within scope.
9. Having received a complete copy of the information, the Commissioner is satisfied that the redacted information does fall within the scope of the request as it clearly informed the public authority’s considerations.
10. Having considered this additional information, the Commissioner is satisfied that it is not personal data. Nor is it sufficiently covered by the

arguments the public authority supplied in relation to section 43 for the Commissioner to be comfortable accepting that that exemption would definitely apply to this information.

11. In the circumstances (and as the public authority has not officially departed from its position that the information does not fall within the scope of the request – and would therefore not properly have considered what exemptions might apply to it), the Commissioner considers that the proportionate way forward is to require the public authority to issue a fresh response in respect of this particular information. If the public authority still wishes to withhold the information, it may do so, but it must issue a fresh refusal notice accordingly.

Section 40(2) – third party personal data

12. Section 40(2) of FOIA allows a public authority to withhold information, that is the personal data of someone other than the requester, if there would be no lawful basis, under data protection legislation, that would allow for that personal data to be published.
13. Information will be personal data if it identifies a living individual and either has that individual as its focus or is of biographical significance to that individual.
14. The withheld information comprises of an extract from the minutes of the meeting at which the donation was reviewed by the Committee to Review Donations and Research Funding (“the Committee”) as well as a vetting report prepared about the donation. The vetting report contains a section titled “Appendix One” – which is itself split into two sub-sections. The Commissioner has already dealt with the second sub-section above.
15. Having looked at the relevant extract of the minutes, the Commissioner is satisfied that, once the name of the person who made the donation (“the Donor”) is removed, the remaining information only records the outcome of that particular section of the meeting – which is already in the public domain. The Commissioner is thus of the view that the substance of this information is already in the public domain – with the exception of the name of the Donor, which is clearly that person’s personal data.
16. The other personal data in this document is the names of the individuals who comprised the Committee at that time. That information is the personal data of the individuals concerned.
17. The Commissioner next turns to the vetting report. This comprises of three documents. The first document is titled “Annex I”. Then there is “Appendix One” which is split into two separate sections.

18. Annex I is split into four sub-sections. The first subsection provides an overview of the proposed donation, of the activities of the Donor and information about a separate organisation. The second sub-section records vetting results. The third sub-section records the risk assessment and, the fourth, the recommendation to the Committee.
19. The Commissioner is satisfied that the first sub-section identifies the Donor: either directly, by name, or indirectly by reference to their activities and interests. The Commissioner is therefore satisfied that this information is the Donor's personal data – with the exception of two sentences which refer to previous donation proposals.
20. The second part of this subsection relates to an organisation which is now apparently defunct. The information does not link the Donor to this organisation and it all appears to have been drawn either from the organisation's website (which no longer exists) or from publicly available sources.
21. The Commissioner is satisfied that this organisation's links, to the Oxford Nizami Ganjavi Centre in general and this specific donation in particular, were (at the time of the request) and are still in the public domain. He is therefore of the view that this information is not the Donor's personal data.
22. Sub-sections two, three and four refer to the donation, rather than the Donor. Given that the Donor is not named (and, for the reasons set out below, will not be named), the Commissioner does not consider this information to be the Donor's personal data as it is either already in the public domain or is the sort of information that would be expected to have been recorded, given the processes in place and the eventual outcome.
23. Moving on to the first part of Appendix One, the Commissioner recognises that the majority of the document identifies the Donor: either directly, by name, or indirectly by reference to their activities and interests. The Commissioner is therefore satisfied that this information is the Donor's personal data – with the exception of two paragraphs which refer to previous donation proposals.
24. Lastly, the Commissioner turns to the second part of Appendix One. The University argued that this was not in scope. For reasons that have already been explained, the Commissioner considers that this document does fall within the scope of the request. However, he does not consider it to be the Donor's personal data as the document does not mention or refer to the donor.

Lawful basis

25. In respect of the information that the Commissioner has determined to be the personal data of the Donor or of the Committee members, the Commissioner has gone on to consider whether there is nevertheless a lawful basis that would allow for the information to be published.
26. There is no evidence that would indicate that any of the individuals involved have given their consent for the information to be published and the Commissioner understands that the Donor has (as is their right) explicitly refused to give consent.
27. Therefore the Commissioner considers that the only lawful basis on which the information could be published would be if it was necessary in order to satisfy a legitimate interest.
28. The public authority accepted that there was a legitimate interest in knowing who it was receiving money from and whether the acceptance of such money was in accordance with legal and ethical principles.
29. The Commissioner also considers that publication is necessary to achieve this interest as there are no less-intrusive methods of determining either the source of the donation or the identities of the individuals who consider donation proposals.
30. However, even where publication is necessary in order to satisfy a legitimate interest, that interest must still be balanced against the rights of the data subjects.
31. The Commissioner recognises that the legitimate interest in this case is amplified by the size of the donation. The public authority supplied a copy of its 2021-2022 donor report which records only five donations of £10 million or more – though the report does not include anonymous donations.
32. Furthermore, the Commissioner is aware of the concerns raised by the complainant and others about so-called “reputation laundering” in which an individual, company or even a foreign state attempts to improve its international reputation by donating to, or investing in, British cultural heritage.
33. However, in this case, the Commissioner is not persuaded that the legitimate interests outweigh the rights of the data subjects.

34. In the case of the Donor, the public authority has pointed out that it has a published process¹ and criteria² that govern its decision to accept or reject donations in excess of £20,000. For endowments, it also puts in place regulations to govern what the endowments can and cannot be used for. The public authority directed the Commissioner's attention to regulations that it had previously published – including the regulation specific to the Oxford Nizami Ganjavi Centre which sets out what the funds may be used for.³
35. The withheld information does not demonstrate that the public authority failed to carry out due diligence prior to accepting the donation or that it failed to follow its published process.
36. In the Commissioner's view, the identity of the Donor is less important than the mechanisms the public authority has put in place to validate the source of the funds and to prevent the Donor from exerting undue influence over the use to which their donation is put.
37. The Commissioner also notes that that the public authority, whilst not revealing the identity of the Donor, has confirmed that the Donor does not occupy a position in any government and is not the subject of any international sanctions.
38. The Commissioner recognises that there are perfectly legitimate reasons why a person or entity may wish to make an anonymous donation. The value is, of course, in the giving, not in the taking of credit. Anonymity should not be equated to a desire to conceal nefarious activity. It is not illegal to make an anonymous donation – or to accept one.
39. Having viewed the withheld information and other information about the Donor that is in the public domain, the Commissioner has seen no evidence that the Donor has been accused of any improper activity. The Donor made their donation on condition of anonymity. The public authority was entitled to agree to that condition and therefore disclosure would be contrary to the Donor's reasonable expectations.
40. The complainant is evidently concerned about the Oxford Nizami Ganjavi Centre's links to the Azeri government and that government's ability to exert influence. The Commissioner is satisfied that there is sufficient

¹ <https://governance.admin.ox.ac.uk/legislation/council-regulations-1-of-2010#collapse1433876>

² <https://www.ox.ac.uk/about/organisation/finance-and-funding/donations-and-research-funding>

³ <https://governance.admin.ox.ac.uk/legislation/oxford-nizami-ganjavi-centre-fund>

information in the public domain that allows for the quality of the Centre's output and its teaching to be properly scrutinised. As the Donor's identity remains private, it is difficult to see how a donation of any amount could have an effect on their reputation.

41. Therefore, in the case of the Donor, the Commissioner is satisfied that their rights as a data subject outweigh the legitimate interest. As a result, there is no lawful basis on which the information could be published and thus the public authority is entitled to rely on section 40(2) of FOIA to withhold the Donor's identity.
42. In relation to the membership of the Committee, the public authority argued that the individuals had a reasonable expectation that their membership of the Committee would not be revealed. Membership of the Committee was kept anonymous so that the individuals involved could reach an independent view on each donation or funding proposal, free from external influence.
43. Given the information already in the public domain about the Committee's remit, the guidelines it must follow and the criteria for judging proposals, the Commissioner is satisfied that this largely meets any legitimate interest in understanding how the Committee works. Publication would therefore be contrary to the reasonable expectations of the Committee's membership and would be likely to cause them a certain amount of damage and distress.
44. In the circumstances, the Commissioner is once again satisfied that there is no lawful basis for publishing this information and therefore the public authority is entitled to rely on section 40(2) of FOIA to withhold the names of Committee members.

Section 43 – commercial interests

45. Given that the public authority cited both sections 43 and 40 of FOIA to all the information it was withholding, the Commissioner has considered whether the information not covered by section 40 might be covered by section 43 instead.
46. Section 43 of FOIA allows a public authority to withhold information whose disclosure could harm the commercial interests of any party – including itself.
47. The public authority explained to the Commissioner that it was in competition with other higher education institutions to secure donations. It noted that around 90% of the money it raised each year came from "major" donors (ie. those donating in excess of £100,000) and that, inevitably, those donors tended to have a number of competing claims on their attention. The donations the public authority receives enable it

to maintain and enhance the quality of its research and teaching – thereby enabling it to continue attracting the most talented students and staff.

48. Disclosure would prejudice its commercial interest, the public authority argued, because:

“most of the money raised from major donors comes from those willing to be publicly identified. However, those who desire anonymity still make a significant contribution. In the last five years, the University received approximately £86.3 million in anonymous donations. If it became known that as a result of a FOI request, the University had been required not only to name an anonymous donor but also to reveal the information collected on that individual for the purpose of the vetting process, it would send a message to all existing or prospective anonymous donors that the University was not able to protect their anonymity and privacy even where this had been agreed up-front as a condition of the donation.

“Potential donors would be likely to conclude: (i) that the University had breached [the Donor]’s expectations as to privacy and confidentiality; and (ii) that, likewise, any dealings that they may have with the University would not be on a confidential basis. This in turn would be likely to deter them from making donations, and to encourage them instead to support other causes or institutions. Existing donors would be less likely to donate again, contrary to the normal pattern of giving. (Once a relationship with a donor is established, it is common for the same individual to continue their support of the University by making further gifts.)

“Donors may expect the University to carry out ‘due diligence’ but they would also expect it to be conducted on a private and confidential basis and they would not always be aware of the sensitive information that the University considers as part of that. We would also have to reconsider whether we were able to offer anonymity to donors who did not wish to be publicly acknowledged, as the University would have significant concerns about giving assurances of confidentiality if these were undermined by the operation of FOIA. This would mean that we would have to consider withdrawing from that part of the ‘market’ and lose the significant funding that we receive, with obvious implications for our commercial interests.”

49. The Commissioner has consistently recognised that higher education institutions operate in highly competitive markets – both the market for students and the “market” for donations.

50. Whilst the public authority did not state explicitly which test it was applying, the Commissioner considers that the lower threshold of "would be likely to" prejudice applies as the chance of prejudice, whilst significant, is lower than 50%.
51. Some parts of the withheld information under consideration here do not concern the identity of the Donor or any other anonymous donation. These parts relate to previous donation proposals (from identifiable sources) that did not come to fruition.
52. The Commissioner recognises that there may be a variety of reasons why a proposed donation is not ultimately made. It may be because the recipient decides that the potential donor is unsuitable. Equally it may be because the donor may decide, for their own reasons, that they no longer wish to make the donation – or that the two parties have been unable to agree the terms on which the donation is to be made. Nevertheless, the Commissioner recognises that reputational damage might result to an identifiable donor if it is revealed that they proposed, but did not ultimately make, a donation because it will be assumed that there must have been a reason why the donation was not accepted, rather than a reason why it was not made.
53. The Commissioner accepts that some donors may be put off from entering the donation process if they believe that, once they have submitted their proposal, their identity will become public, regardless of whether the donation is ultimately made. If that were to happen, it would reduce the public authority's pool of donors, thereby reducing its income and making it more difficult to attract the best students. That is sufficient to engage the exemption.
54. However, in respect of those parts of Annex I which do not relate to previous proposals, the Commissioner is not satisfied that the exemption would be engaged.
55. As has previously been noted, the organisation referred to in the withheld information is now defunct and the information relating to it was scraped from publicly available sources. The Commissioner considers that constitutes a relatively specific set of circumstances that would be unlikely to apply to many proposed donations. It therefore sets a limited precedent and should not deter the majority of potential donors from offering donations.
56. Sub-sections two, three and four of Annex I – to the extent that they relate to the Oxford Nizami Ganjavi Centre Donation – would also not set a wider precedent if disclosed. Because the Donor has not been named, any considerations would be incapable of causing them

reputational damage, because no one else would know who the Donor was.

57. Furthermore, as the public authority has pointed out, potential donors should have a reasonable expectation that it will carry out due diligence checks before accepting donations – therefore the mere fact that the public authority carried out such checks on this occasion should come as no surprise to anyone and should not deter other donors.
58. Therefore section 43 of FOIA does not apply to this information and thus the public authority is required to disclose it. The information is specified in the confidential annex.

Public interest test

59. Turning to the information to which section 43 does apply, the Commissioner has gone on to consider the balance of the public interest which, in this case, favours maintaining the exemption.
60. The Commissioner has already set out above the information about the public authority's procedures for considering donations that is in the public domain. He considers that the public interest in disclosure is considerably lower in relation to this particular information because it relates to proposed donations that were not made. The public interest will be highest in relations to donations that the public authority actually accepted. It is difficult to see how anyone could attempt to exert influence by proposing, but not actually making, a donation.
61. The commissioner is therefore satisfied that, in the circumstances of this case, the balance of the public interest favours maintaining the exemption.

Confidential annex

62. In order to preserve a meaningful right of appeal for the public authority (should it choose to exercise it), the Commissioner has found it necessary to set out certain matters in a confidential annex. Because of how the withheld information, as a whole, is structured, it is difficult to identify relevant sections without referring to the content of the information itself. The annex will only be provided to the public authority. It does not contain any further reasoning for the decision.

Right of appeal

63. 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

64. 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.
65. 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

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