

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 January 2024

Public Authority: The Governing Body of the University of Central Lancashire

Address: Harris Building
Preston
PR1 2HE

Decision (including any steps ordered)

1. The complainant has requested information from the University of Central Lancashire ("the University") in relation to communications between a specific Professor and the Queen's University Belfast ("QUB"). The University advised that it does not hold the requested information for the purposes of FOIA.
2. The Commissioner's decision is that the information sought by the complainant is not held by the University for the purposes of FOIA and that the University is entitled to rely on section 3(2)(a) of FOIA.
3. The Commissioner does not require further steps as a result of this decision notice.

Request and response

4. On 6 August 2023, the complainant wrote to the University and requested information in the following terms:

"All the sent and received communications (whether internal, external, and regardless of the platform) of Professor [name redacted] that are

related, however tangentially, to Queen's University Belfast. Such search can be limited to exchanges that took place after the 1st of March 2023. The nature of this request includes, but it is not limited to: e-mail, physical correspondence, chat exchanges, messaging exchanges, etc”

5. The University responded on 9 August 2023. It stated that it does not hold the requested information.
6. Following an internal review the University wrote to the complainant on 15 August 2023. It stated that it upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 27 September 2023, to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether, on the balance of probabilities, the University holds the requested information for the purposes of FOIA.

Reasons for decision

Section 1 – general right of access

9. Section 1(1) of FOIA provides 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.

Section 3(2) – information held by a public authority

10. Section 3(2) sets out the circumstances in which information is considered to be 'held' for the purposes of FOIA:

“For the purposes of this Act, information is held by a public authority if—

 - (a) it is held by the authority, otherwise than on behalf of another person, or
 - (b) it is held by another person on behalf of the authority.”

11. The Commissioner interprets the phrase “otherwise than on behalf of another person” to mean that a public authority holds information for the purposes of FOIA if it is held to any extent for its own purposes.
12. The Commissioner’s guidance¹ ‘Information you hold for the purposes of FOIA’ makes it clear that whether information is held by a public authority, or is held on behalf of a public authority, depends on the facts of the case.
13. The Upper Tribunal considered the meaning of section 3(2)(a) in the case of *University of Newcastle upon Tyne v the Information Commissioner and the British Union for the Abolition of Vivisection* [2011] UKUT 185 (AAC, 11 May 2011)². It explained that the concept of ‘holding’ information for FOIA purposes “is not purely a physical concept, and has to be understood with the purpose of the Act in mind.” This means that information may be present on a public authority’s premises (or even its IT network) but not held by the authority for FOIA purposes. To be considered ‘held’ for FOIA purposes, there has to be “an appropriate connection between the information and the authority”.
14. The complainant’s position is that they consider the University would be likely to hold the information as the Professor in question is a Director and Deputy Chief of the Board of the University and Colleges Employers Association (UCEA), and is therefore likely to have sent or received correspondence relating to the UCEA’s decision to expel QUB.
15. The University has explained that it carried out appropriate searches to determine whether or not it held any correspondence that fell within the scope of the request. It went on to explain that if information were held, it would be a private communication received by the Professor in his role as a Director and Deputy Chair of the Board of the UCEA.
16. The University also explained that even if copies of communications involving the Professor, in his capacity as a UCEA Board member were held, the information contained within these communications would be held on UCEA’s behalf. It continued that unless this information was used by the University for its own purposes in addition to UCEA’s purposes, it could not be considered to be held by the University for the

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/information-you-hold-for-the-purposes-of-foia/>

² [Outsourcing – FOIA and EIR obligations | ICO](#)

purposes of FOIA. The University added that it does not hold any information for its own purposes.

17. The University also advised that the UCEA is a limited company and is entirely separate from the University. It added that if information were held, it would private communication between the Professor and the UCEA and it would not be needed or used by the University for any of its functions, and nor would the University be permitted to use such communications for its own purposes.
18. The University has provided the Commissioner with the details of the searches that it carried out, which included searching emails and asking individuals if any text or chat messages were held on their phones in relation to the matter. These searches did not return any information held for the purposes of FOIA. It added that all correspondence would be electronic, as any mail received is scanned into the system.
19. The University also advised that it has no reason to believe that information in relation to the request would have been deleted or destroyed.

The Commissioner's view

20. The Commissioner has considered the complainant's concerns and the information that they have provided, including further information in relation to a different FOI request.
21. The Commissioner has also considered the University's explanations regarding why it considers that it does not hold information in relation to the request for the purposes of FOIA.
22. The Commissioner is satisfied from the University's submissions that were any requested information held the University would not use it for its own purposes. If any information were held, it would be a private communication between the Professor and the UCEA.
23. The Commissioner is satisfied that the University does not hold the requested information for the purposes of FOIA and, therefore, it was entitled to rely on section 3(2) to refuse the request.

Right of appeal

24. 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

25. 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.
26. 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

Michael Lea
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF