

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

### **Decision notice**

**Date:** 11 June 2020

**Public Authority:** The Council of the University of London

**Address:** Senate House  
Malet Street  
London  
WC1E 7HU

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

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1. The complainant has requested the names of the examiners who assessed the PhD thesis of President Tsai Ing-wen, the President of the Republic of China, and the date on which the thesis was assessed. The University of London ('the University') has withheld the information under section 40(2) of the FOIA as it considers it to be the personal data of third persons.
2. The Commissioner's decision is as follows:
  - The University is entitled to withhold the information the complainant has requested under section 40(2) of the FOIA as it is the personal data of third persons and disclosing it would be unlawful.
3. The Commissioner does not require the University to take any remedial steps.

## Request and response

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4. On 29 October 2019, the complainant wrote to the University of London and requested information in the following terms:

*"I am requesting the names of the Examiners for the 1984 Ph.D. thesis of Tsai Ing-wen. The thesis is entitled "Unbfair [sic] Trade Practices and Safeguard Actions". Please also inform me of the date the Examiners signed approval of the thesis."*
5. The University responded on 2 December 2019. It directed the complainant to where information about the thesis in question is published. This is a statement by the London School of Economics (LSE) dated 8 October 2019. The LSE had noted that it had received a number of queries regarding the academic status of its alumna, President Tsai Ing-wen. It confirmed that President Tsai had been correctly awarded a PhD in Law in 1984, and that at that time the University of London awarded degrees. The University also provided a link to where a copy of the thesis in question can be accessed, on the LSE's website.
6. The University refused to release the specific information requested as it considered it to be President Tsai Ing-wen's personal data and so exempt from disclosure under section 40(2) of the FOIA.
7. Following an internal review, the University wrote to the complainant on 24 January 2020. It maintained its position.

## Scope of the case

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8. The complainant contacted the Commissioner on 5 February 2020 to complain about the way his request for information had been handled.
9. The Commissioner's investigation has focussed on the University's reliance on section 40(2) to withhold examiners' names and the date on which the thesis was approved.

## Reasons for decision

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### Section 40 – personal data

10. 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 one of the conditions listed in section 40(3A), (3B) or 40(4A) is satisfied.

11. In this case the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. This applies where disclosing 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').
12. 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.
13. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosing that data would breach any of the DP principles.

### **Is the information personal data?**

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

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

15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. 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.
17. 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.
18. In this case, the request is for examiners' names and the date on which the thesis of a named individual was assessed ie recommended for a particular result. In his initial complaint to the Commissioner, the complainant has indicated that he is seeking the date on which the examiners signed that they had assessed the thesis.
19. The University has provided the Commissioner with the requested information. In its submission the University has noted that the focus of the request is the educational record of a specific person: President Tsai

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<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

Ing-wen. The examiners' names are clearly the personal data of those individuals; their names relate to those individuals and they could be identified from their names and the context of the request. (In the absence of evidence to the contrary, the Commissioner is going to assume that the examiners working in 1984 are still alive.) However, this information can also be categorised as President Tsai's personal data as it concerns the thesis she produced. It therefore relates to her and, since she is named in the request, she can be identified from it. For the same reasons, the Commissioner considers that the date that President Tsai's thesis was assessed can also be categorised as her personal data.

20. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the requested information relates to President Tsai Ing-wen and particular examiners. She is satisfied that this information both relates to and identifies these individuals. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
21. 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.
22. The most relevant DP principle in this case is principle (a).

### **Would disclosure contravene principle (a)?**

23. 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".*

24. 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.
25. 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.

### **Lawful processing: Article 6(1)(f) of the GDPR**

26. 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.

27. 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"*<sup>2</sup>.

28. 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

29. 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*

30. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and

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<sup>2</sup> 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"*.

commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

31. The complainant is interested in the legitimacy of President Tsai's 1984 thesis. He is concerned that the thesis was not filed with the LSE's library until 2019 and that the filed copy appears to be a draft document. He says that this graduate had a non-Doctoral instructor as an Advisor, which he also considers casts doubt on the thesis' validity. In the Commissioner's view, the legitimacy or otherwise of President Tsai's thesis is a private concern for the complainant. However, given the position of one of the data subjects – President Tsai – there may be some broader public interest in the matter.

*Is disclosure necessary?*

32. '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.
33. The complainant is of the view that President Tsai's 1984 thesis may not have been legitimate. He considers that disclosing the names of the examiners who assessed the thesis, and the date when they 'signed it off', is necessary because evidence of certification would support a view that the thesis was (or was not) a valid piece of work.
34. In its submission to the Commissioner, the University has explained that recipients of PhD degrees in almost all cases have their thesis listed in the publicly searchable University library and therefore the confirmation of a qualification can be determined via this route.
35. The University has told the Commissioner that it holds a copy of the examination report for the thesis and the thesis copyright submission form. There is also a record of the individual and the thesis on the University's pass list published in that year. Furthermore, there is a listing of President Tsai's thesis '*Unfair trade practices and safeguard actions*' in the Institute of Advanced Legal Studies (IALS) index document "*Legal Research in the United Kingdom 1905-1984*", which was published in 1985. The original copy held by the University library

was lost or mis-shelved sometime between mid-1980s and 2010s over which period there were numerous structural changes to the library.

36. The LSE obtained a copy of the thesis from the graduate, President Tsai, and made a digital copy available on LSE's website in October 2019, along with the published statement referred to above.
37. The University has advised that, in its responses to separate FOI requests, it has stated that it holds records of the viva and the pass list in regard to this graduate – President Tsai – and can therefore confirm the award of the degree.
38. The University's position is that the validity of President Tsai's 1984 thesis is confirmed because the thesis is published and available online. Other information is held – such as the viva associated with the thesis and the University's contemporaneous pass list containing President Tsai's name – that also supports a position that the thesis is legitimate. In addition, a public statement to that effect has been made by the college at which President Tsai was registered.
39. To a large degree, the Commissioner agrees that the validity of the thesis has been demonstrated and that releasing the thesis examiners' names and the requested date is not necessary to meet the complainant's legitimate interests. However, for the sake of completeness the Commissioner will accept that disclosure is necessary, and she has gone on to conduct the balancing test.

*Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms*

40. It is necessary to balance the legitimate interests in disclosure against the data subjects' interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subjects would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
41. In considering this balancing test, the Commissioner has taken into account the following factors:
  - the potential harm or distress that disclosure may cause
  - whether the information is already in the public domain
  - whether the information is already known to some individuals
  - whether the individual expressed concern to the disclosure; and
  - the reasonable expectations of the individual

42. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
43. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
44. In his correspondence to her, the complainant has provided the following arguments for the information's disclosure:
  - The University has not offered any citations of support for its assertion that the individuals' privacy should be protected, nor has it cited any precedent to void transparency of the diploma process.
  - The names of the examiners and the dates they certify theses with their signatures are not "*further records of assessment*", as the University had advised him. The role of examiners is fundamental to the University mission and is an authenticating necessity for the integrity of a University of London degree. Lack of transparency in the degree award process harms the University of London and the public by undermining confidence in the legitimacy of the degree.
  - Current LSE policy on the nomination of examiners precludes any student control over the Examiner selection process: "*It is not the responsibility of students to nominate their own examiners and students do not have the right to request and have appointed examiners of their choosing.*"
  - Examiner records are kept in the custody of the PhD Academy and not in student files: "*Examiners must provide the PhD Academy with the following completed paperwork within two weeks of the viva having taken place: (a) examiner's report form—confirming the examination outcome.*"
  - There is significant public interest in President Tsai's thesis, particularly in Taiwan. There is an "*ongoing public controversy*" over Tsai Ing-wen's 1984 thesis that is most likely damaging to her. One recurrent theme on social media is that there actually was no viva and that President Tsai had dropped out, which is why her thesis was never submitted to the LSE library as required of all doctoral candidates.
  - The quickest and best way to end the allegation of academic fraud would be simply to identify the thesis examiners and verify the date they authenticated the degree with their signatures.

Disclosure would cause no damage or distress and end much of the current public controversy. Even if disclosure would not totally end the controversy, it is difficult to imagine how disclosure could result in damage or distress to President Tsai, unless there were no examiners in which case she would be caught in a lie. If the only damage or distress that could come to President Tsai by disclosure is the revelation there were no examiners, that should not be shielded from public disclosure.

- The examiners have not asserted any privacy rights, the University did not assert any privacy right for examiners, and there is some question as to whether the examiners actually exist.
  - The LSE has released examiners' names previously (during the Woolf Inquiry in 2011) and this has set a precedent.
45. In its submission to her, the University has told the Commissioner that its general policy is that it does not disclose details of a graduate's degree to a third party without the consent of the individual or whether required to by a legal exemption in the Data Protection Act 2018. In some cases, the University may weigh up the legitimate interests and confirm a qualification has been obtained. Further details (such as the classification of the degree, copies of coursework, registration details, dates of completion) are not disclosed.
46. The University says that, like all PhD graduates, the individual in this case has a reasonable expectation that their qualification will be a matter of public record via a library or other public register. There is no expectation that records of the examination process will be disclosed.
47. It says that students will have a high expectation that records of their registration and their 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, there is no expectation that further records of assessment would be disclosed. The nature of the disclosure would have an impact on the University's position on the privacy and confidentiality of all its student records.
48. The University says it has thousands of graduates. Many have progressed to positions of power and influence in public life. It has noted that the PhD qualification in question precedes this individual's political career and makes the point that a degree qualification is not essential for a political career in the same way that a medical degree would be for a physician. That is true. It is not a requirement for the role of President of the Republic of China to have a PhD. If it were, and

President Tsai's PhD was not legitimate, that might be a concern. What is of issue here is whether the University's process for assessing and awarding PhDs is valid in all cases.

49. It is unfortunate that the copy of President Tsai's thesis that the University library held was lost or misplaced between the mid-1980s and 2010, during various restructuring changes to the library. This may have been why that version of the thesis was not published in the period after 1984. However, in response to a request for it from the LSE, President Tsai provided LSE with a copy of the thesis that she held. The LSE has published a copy of this thesis that it received from President Tsai, since 2019. The complainant considers the published thesis appears to be a draft. It may or may not be a draft version, but this is the version of her thesis that President Tsai still held, some 35 years after first writing it. The Commissioner understands that the paper copy of the thesis that the University received from President Tsai and which it has converted to an electronic version and published is the only paper copy it has been able to locate at this point.
50. However, other information – such as the thesis' inclusion in the IALS index in 1985 – evidenced that, at that time, the thesis had been completed and assessed.
51. At issue here is whether President Tsai's PhD was valid and properly awarded by the University and, more generally, whether the public can trust the University's processes. The complainant has his particular concerns, but the Commissioner considers that the University has demonstrated sufficient transparency in the matter of this PhD thesis; she has no compelling reason to doubt that the University's award processes were not robust in 1984 or now. Such public interest as there is in the matter of this thesis is outweighed by the data subjects' – that is, President Tsai's and, in particular, the examiners' - reasonable expectations. Neither President Tsai nor the examiners would have expected their personal data to be released so many years before the introduction of the FOIA. Whilst President Tsai *might* reasonably expect this now, the Commissioner considers that disclosure remains beyond the examiners' expectations. It is therefore possible that disclosing this information would cause them distress.
52. That a different public authority in a different set of circumstances released examiners' names in the past is not relevant here; the Commissioner considers each case on a case by case basis. Based on the above factors, the Commissioner has determined in this case that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.

53. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that she does not need to go on to consider separately whether disclosure would be fair or transparent.

**The Commissioner's view**

54. The Commissioner has decided that the University was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

## Right of appeal

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55. 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](mailto:grc@justice.gov.uk)

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

56. 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.
57. 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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