

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 May 2023

Public Authority: The Governing Body of SOAS, University of London

Address: Thornhaugh Street
Russell Square
London WC1H 0WG

Decision (including any steps ordered)

1. The complainant requested information about a member of academic staff. The School of Oriental and African Studies (SOAS) advised it does not hold some of the requested information, it disclosed some, directed the complainant to relevant information that is already published and applied section 40(2) of FOIA to the remainder. Section 40(2) concerns information that is personal data.
2. The Commissioner's decision is that SOAS is entitled to apply section 40(2) of FOIA to the information it is withholding. It is another individual's personal data and disclosing it would not be lawful.
3. It is not necessary for SOAS to take any steps.

Request and response

4. On 4 November 2022 the complainant wrote to SOAS and requested information in the following terms:

"I would like to submit a Freedom of Information Act request to obtain information about the academic qualifications and the academic positions of [redacted] at SOAS from 1992 to the present time.

I would also like to know according to what officially written and agreed process [redacted] has been appointed to [redacted] academic positions as a senior fellow from September 1992 to September 2018, and as a Senior Lecturer from September 2018 to the present time at SOAS. That is how [redacted] has been describing [redacted] positions at SOAS on [redacted] LinkedIn account. A copy of which I am providing you with this email.

There is no information about [redacted] academic qualifications in [redacted] LinkedIn account. There is only a reference to a BA (London) in an internet page ascribed to be from SOAS. I enclose a copy of that information for your attention). However, there is no reference as to from which university or when this BA has been obtained.

There is also a reference to [redacted] position as the organiser of SOAS-Cambridge undergraduate workshop in the website of SOAS. Please provide further details about this workshop as to when and where these workshops are being held and what process has been used to appoint [redacted] as the organiser of this workshop.

[Redacted] has also become [redacted]. Please provide the information as to what written and agreed process has been used to appoint [redacted] to this position and when such an appointment was made.

Please note that based on such advertised positions at SOAS and qualifications and/or lack of proper knowledge about [redacted] academic qualifications, [redacted] has been appointed to important posts outside SOAS, with important responsibilities affecting the life of other people. Therefore, it is clear that it is in public interest to find out how [redacted] has been appointed to these academic posts within SOAS, and what are [redacted] real academic qualifications, when and from which university [redacted] has obtained [redacted] BA.”

5. In its response to the request, SOAS referred to the request above and to other requests dated 7 and 8 November 2022. It advised it no longer holds the recruitment policy for 1992, directed the complainant to relevant, general information on its website, provided general information about the procedure associated with one of SOAS' roles and withheld the remaining information requested by the complainant under section 40(2) of FOIA.
6. The complainant requested an internal review on 25 December 2022 and requested additional information as follows:

"I would be most grateful if you provide me with a copy of written agreed document setting out this above procedure. Please also provide the information as to when was [redacted] was first elected as the [redacted] and provide documentary evidence that [redacted] was elected as the [redacted] according to the procedure that you mention above and reflected in that previously agreed written document that you have quoted from but you have not yet provide me with a copy. This information should be available generally for public interest to make sure that the interests of the public are secured and therefore, it could not be classified under any exemptions under the Freedom of Information Act.

In relation to the procedure for academic promotions for 2018 to the present that you stated could be found on your website here:

[Academic Promotion Procedure | SOAS](#)

[Redacted]

In relation to the The [sic] SOAS-Cambridge undergraduate workshops that you mentioned are no longer running, please provide the dates of these works, the frequency of these workshops and the subject or summary of the nature of these workshops. All these dates and information should be publicly available in order not to mislead the students or staff thinking that these workshops are still operating and also which from which place these workshops were being funded. All the information about these workshops would be essential as part of the SOAS transparency policy in relation to from whom and for what period SOAS is obtaining funding for educational purpose..."

7. Following an internal review SOAS wrote to the complainant on 7 March 2023. It stated that it maintained its reliance on section 40(2). It is not clear whether that response applied to the original request(s) of 4 (and 7 and 8) November 2022 and the new request of 25 December 2022, or applied to the original request(s) only.
8. Together with their complaint to the Commissioner, the complainant sent a copy of their request of 4 November 2022 and internal review request of 25 December 2022. The complainant said that,

"...As you would see, the SOAS refuses to disclose the information about [redacted]'s qualifications, to support their statements with any previously agreed documents in relation to the procedure related to the appointment of the [redacted], to provide any information about the content and date and period in which the SOAS-Cambridge University workshop took place, and the manner in which [redacted] was promoted from a research fellow to a senior lecturer without being a lecturer first..."

9. The Commissioner understands from this that the complainant is dissatisfied with SOAS' application of section 40(2) to information about: [1] a named individual's qualifications; [2] the procedure followed to appoint that individual to a particular role; [3] a particular workshop; and [4] the promotion of the named individual. This information is requested in the correspondence of 4 November 2022 and internal review request of 25 December 2022.
10. Following correspondence with the Commissioner, SOAS issued a fresh response to the complainant on 26 May 2023. It disclosed information about the procedure for adopting a Chair and the undergraduate workshop. SOAS continued to withhold information about the academic staff member's appointment and promotion(s) including information about members of staff involved in these HR processes, and details about the staff member's academic qualifications.
11. Regarding the latter, the Commissioner did a quick Google search under the staff member's name and retrieved a good deal of information about that individual including the fact that they have a particular degree awarded by the University of London.
12. Since their degree and who awarded it is already in the public domain, (and SOAS advised that it is also published on its website and that the complainant has referred to it in the request) the Commissioner advised SOAS that it could not withhold it under section 40(2). SOAS provided that information to the complainant on 31 May 2023. But it confirmed to the Commissioner that it holds other information about the staff member's qualifications that it continues to withhold under section 40(2).

Reasons for decision

13. SOAS has now addressed elements [2] and [3] of the requested information. This reasoning therefore covers SOAS' application of section 40(2) to the requests for information about [1] the named individual's qualifications and [4] the promotion of that individual.

Section 40 personal information

14. Section 40(2) of 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.

15. In this case the relevant condition is contained in section 40(3A)(a)¹. 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 UK General Data Protection Regulation ('UK GDPR').
16. 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 FOIA cannot apply.
17. Second, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

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

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

19. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
20. 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.
21. 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.
22. The complainant has named a specific individual in their request and requested information about that individual; their qualifications and the process by which they were promoted.
23. The Commissioner is satisfied that the information relates to the member of academic staff in question (ie the 'data subject'). He is satisfied that this information both relates to and identifies the individual

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

24. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
25. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

26. Article 5(1)(a) of the UK GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

27. 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.
28. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

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

29. Article 6(1) of the UK 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.
30. 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"².

² 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".

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

33. 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 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.
34. The complainant considers that the data subject may not be appropriately qualified or may not have been appropriately promoted.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA and by Schedule 3, Part 2, paragraph 20 the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK 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".

This interest in the data subject would appear to be a private interest for the complainant with little wider, societal benefit other than the general principle of a public authority demonstrating it is open and transparent. It is nonetheless a legitimate interest for the complainant to have.

Is disclosure necessary?

35. '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 FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
36. Some information relevant to the complainant's request is in the public domain. In addition, SOAS will have an HR department that can scrutinise a person's academic qualifications and where there is doubt, request certificates. In other words, the Commissioner expects that SOAS would have adequate mechanisms in place to appoint properly qualified individuals and there is no wider evidence to suggest that these mechanisms might be unfit.
37. The Commissioner therefore does not consider that disclosure under FOIA is the least intrusive means of achieving the legitimate interests in this case.
38. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, he has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing, and it is unlawful. It therefore does not meet the requirements of principle (a).
39. The Commissioner notes that the Upper Tribunal recently [upheld](#) a First-tier Tribunal (FTT) decision on qualifications where the FTT had agreed with the Commissioner that disclosure was not the least intrusive means of achieving the interest.

The Commissioner's view

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

Right of appeal

41. 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

42. 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.
43. 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

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