

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

### **Decision notice**

**Date:** 15 November 2023

**Public Authority:** The Council of Imperial College  
**Address:** South Kensington Campus  
London  
SW7 2AZ

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

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1. The complainant has requested information from Imperial College London (the College) about the training undertaken by named individuals. The College refused to provide this information, citing section 40(2)(personal information) of FOIA.
2. The Commissioner's decision is that the College was entitled to rely on section 40(2).
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 18 July 2023, the complainant wrote to the College and requested information about the training provided to named individuals involved in disciplinary proceedings:

"I would like to know what specific training programmes the following individuals have undergone, when did they undergo it, how long each training programme was for, and who conducted it.

[redacted names and positions]"

5. The College responded on 26 July 2023. It stated that the information was personal data and exempt under section 40(2) of FOIA.
6. On 3 August 2023 the complainant asked for an internal review:

“...I am asking specifically for the data with regard to the training they have been provided by the College with regard to their role as Investigating Officers and Disciplinary Panel members. Because they are supposed to have received training for these roles.

There is no reason why the data with regard to their training with regard to these roles should be kept confidential. Or why these individuals should expect that the training they have received with regard to these roles to be kept confidential.

They have been entrusted with serious responsibilities in their role as Investigating Officers or Disciplinary Panel members...”
7. On 7 August 2023 the College stated that there had not been a misunderstanding and that the requested information was exempt. The College said that the complainant had not specified that they were only interested in training provided by the College regarding these individuals roles as Investigating Officers and Disciplinary Panel members. However it concluded that this did not alter its decision or make it reconsider the request.
8. Following an internal review, the College wrote to the complainant on 6 September 2023. It maintained its original position that the requested information was personal data and consequently exempt from disclosure.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 10 September 2023 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of his investigation is to consider the College’s citing of section 40(2) of FOIA to the requested information.

## **Reasons for decision**

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## **Section 40 personal information**

11. 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 where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
12. In this case the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. 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 General Data Protection Regulation ('GDPR').
13. 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.
14. Secondly, 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?**

15. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual".
16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
17. 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.
18. 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.
19. In the circumstances of this case, though he has not considered it necessary to see the withheld information, the Commissioner is satisfied that the information relates to identified individuals. The College contends that the training record of an individual is that person's personal data and the Commissioner agrees. The names and roles of

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

these third parties is clearly information that both relates to and identifies those concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

20. 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.
21. The most relevant DP principle in this case is principle (a).

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

22. 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".
23. 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.
24. 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**

25. 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>.

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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".

26. 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:-
- 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.
27. 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

28. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
29. Further, 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. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test. 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.
30. The complainant argues that the grounds for refusing the requested information are "specious". Their view is that the information relates to the training of Investigating Officers or Disciplinary Panel members to represent the College. These roles have "serious responsibilities" that could impact on an employee's job career and mental health. The complainant states that training is a requirement and that it would be "violating its own policy" if it is not providing this training. The complainant also points out that it is "violating its own Values Framework" such as "Integrity" which includes Transparency in particular.' As the College,

'is one of the UK's and World's Top Universities, it should display "Excellence" in all respects and therefore those representing IC should be properly trained, both prior to taking on their roles, and regularly thereafter.'

31. The Commissioner accepts that the complainant has a legitimate interest in the requested information and will now go on to consider whether disclosure is necessary.

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 Commissioner is satisfied in this case that there are no less intrusive means of achieving the legitimate aims identified.

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

34. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject 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.
35. 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.
36. 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.

37. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual/those individuals.
38. The College argued that disclosure to the public of the requested information "would contravene the lawfulness element of this principle because there is no lawful basis for processing the information for the purpose of disclosure to the public". Taking into account the expectations of individuals about how their personal information would be used it had decided that they "would not expect the information we hold about training that they have received to be shared with the public". The College decided that there wasn't "an Article 6 lawful basis for processing". It concluded that the only two bases were "consent" and "legitimate interests". The College did not have consent and did not think it reasonable to ask for consent.
39. Moving on to legitimate interests, it did not consider that there was any "general legitimate public interest in the information sought". It suggested that the reason for the request was to question whether the individuals named were "sufficiently 'professional' to conduct such investigations. Our view is that there is therefore no legitimate interest in disclosure...". The College concluded that it would not be lawful to do so.
40. The Commissioner accepts this view, whilst acknowledging that the information requested is of significant interest to the complainant. He is not persuaded that its disclosure is of wide enough public interest to justify setting aside the rights and expectations of privacy that the individuals concerned would expect. Although training of this nature is part of an individual's working rather than private life, the Commissioner considers that it would not be proportionate to provide specific details to the public about the training attended by its staff. The complainant argues for "integrity", that those carrying out a particular role need to be trained to do it. Whilst giving some weight to this viewpoint, the Commissioner is also aware that adverse consequences could result from the disclosure of an individual's training record, leading to questioning of their competency which is a matter for their employer. Where a public authority states that it will provide training (which seems to be the case here), it is open to it to provide details of that training. However, this request asks for the specific training undertaken by named individuals and the Commissioner agrees with the College that disclosing this would be beyond their expectations.
41. Based on the above factors, the Commissioner has determined 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.

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



## Right of appeal

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43. 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)

44. 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.
45. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**