

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2024

Public Authority: Aberystwyth University
Address: Hugh Owen Library
Penglais
Aberystwyth
Ceredigion
SY23 3DZ

Decision (including any steps ordered)

1. The complainant requested from Aberystwyth University (the University) information relating to communications between the University's former Vice-Chancellor Professor Elizabeth Treasure and the Universities & Colleges Employers Association (UCEA). The University stated that the requested information is not held for the purposes of FOIA.
2. The Commissioner's decision is that the University does not hold the requested information for the purposes of FOIA, and the University is entitled to rely on section 3(2)(a) of FOIA to refuse the request. Therefore, the Commissioner does not require the University to take any further steps as a result of this decision.

Request and response

3. On 15 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 Elizabeth Treasure that are related, however tangentially, to Queen's University Belfast. Such search can be limited to exchanges that took place after the 1st of January 2023. The nature of this request includes, but it is not limited to: email, physical correspondence, chat exchanges, messaging exchanges, etc."

4. On 12 September 2023 the University responded. It confirmed the information is not held by the University for the purposes of FOIA. It explained that the relevant information is being stored on University systems on behalf of the UCEA board.
5. On 17 September 2023 the complainant asked for an internal review.
6. On 13 October 2023 the University provided its review response. It stated that even if the information were to amount to information held by the University, it would be exempt from disclosure under section 43(2) (commercial interests) and section 41 (information provided in confidence) of FOIA.
7. During the Commissioner's investigation, the University reconsidered its response and decided to withdraw its application of the exemptions cited. The University reiterated its position that the requested information is not held for the purposes of FOIA.

Reasons for decision

8. This reasoning covers why the information within the scope of the request, is not held by the University as a public authority for the purposes of FOIA.

Section 1 - general right of access

9. Section 1 of FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, 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".

The complainant's position

14. The complainant stated the information in dispute "fulfils the requirements to consider that it is being held by AU for purposes of FOIA. Let us remember that Elizabeth Treasure (ET) is the Vice Chancellor of AU." The complainant highlighted the number of direct connections between the University, ET, and UCEA and he argued that this sets the ground "for any reasonable person to conclude that the information is held by AU." He listed to the Commissioner, the direct connections and strongly disputed the University's position that the information is not held. The complainant also considered and set out to the Commissioner, more specific facts about the information in dispute, and reiterated his reasoning which he believes establishes all the relevant connections.

The University's position

15. In response to the complainant's arguments, the University provided the Commissioner with the following explanation:

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

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/outsourcing-foia-and-eir-obligations/>

"Professor Treasure was appointed to the UCEA Board on 1/1/2019 and was a Board member unrelated to her position as Vice-Chancellor of Aberystwyth University. She took up her position on the Board as the Vice President Wales of Universities UK, one of the four corporate members of UCEA, each of which nominates members to the Board.

Although there may have been occasional costs associated with the Vice-Chancellor's role as a UCEA board member, the University does not accept that the role is therefore not independent from the University. As previously stated, the requested correspondence between the UCEA and the Vice-Chancellor was sent in connection with the individual's role on the UCEA board, rather than any other position held at the University. It is private, confidential communication between a board member and the UCEA and the University would not use this information (the correspondence) for its own purposes."

16. The University stated "any correspondence sent or received by Professor Treasure was solely in connection with her role on the UCEA board, rather than her position as Vice-Chancellor of Aberystwyth University." The University said the relevant information has not been, and would not be, used by the University for its own functions or purposes, but that it is simply being stored on University systems on behalf of the UCEA board. The University therefore believes that the information is not held for the purposes of FOIA.
17. In reaching its position, the University considered two recent decision notices (IC-260483-T4L2 and IC-268384-G4M3) where the information was deemed not to be held for the purposes of FOIA. The University referred to these notices within its submission to the Commissioner.

The Commissioner's position

18. The Commissioner has considered the complainant's concerns and the further details put forward to him regarding his dispute.
19. The Commissioner has also considered the University's submissions. His position is he accepts that the University would not use for its own purposes, any information it holds which is within scope of this request. He agrees that any such information held, would be private communications between the Vice Chancellor and the UCEA.
20. Taking into account the University's submissions, the Commissioner is satisfied that the University does not hold the requested information for the purposes of FOIA. Therefore, the University is entitled to rely on section 3(2)(a) of FOIA to refuse the request.

Right of appeal

21. 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

22. 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.
23. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Joanna Marshall
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