

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 August 2024

Public Authority: University College London
Address: Gower Street
London
WC1E 6BT

Decision (including any steps ordered)

1. The complainant has requested information about cases of antisemitism. University College London ('UCL') relied on section 40(2) of FOIA (third party personal information) to withhold some of the requested information in the first three questions, and section 12(1) of FOIA (cost of compliance) to refuse questions four and five of the request.
2. The Commissioner's decision is that UCL was entitled to rely on section 40(2) to withhold some of the requested information in the first three questions, and that it was entitled to rely on section 12(1) of FOIA to refuse questions four and five of the request. The Commissioner also finds that UCL complied with its section 16 obligation to offer advice and assistance.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 15 February 2024, the complainant wrote to UCL and requested information in the following terms:

"I would like the following data on cases of antisemitism at your university since 2019.

Please send me:

1. Overall cases of reported antisemitism broken down by each academic year from 2019 to present (please include information from the 2024/25 academic year that we have had so far)
2. Broken down within each academic year, how many of those cases of antisemitism were perpetrated by students, and how many were perpetrated by lecturers.
3. Broken down within each academic year, the outcome of each of these cases of reported antisemitism (whether the claim was dismissed, is pending, or was accepted and further action taken)
4. In denied dismissed cases related to point (3) please detail both what the claim involved and the reason for dismissal.
5. In accepted cases relating to point (3), what action was taken against the accused, whether it be dismissal / expulsion, written warning, no further action or any other form of further action (if so please detail what this other form was).
6. On what date (or if specific date not available, what year) your university adopted the IHRA definition of antisemitism."
5. On 16 February 2024, the complainant provided the following clarification of their request:

"Where I state I would like data dating back to the 2019 academic year, I mean please could I have all data starting from the 2018/19 academic year. I also write could I have data so far for the 2024/25 academic year, where I actually mean the 2023/24 academic year."
6. On 14 March 2024, UCL responded. It provided some of the requested information for the first three questions but advised that it was withholding some information under section 40(2) of FOIA. It also applied section 40(2) to the information requested in questions four and five. It provided a response to question six.

Scope of the case

7. The complainant contacted the Commissioner on 24 April 2024 to complain about the way their request for information had been handled.
8. During the course of the Commissioner's investigation, the University provided a revised response to the complainant, and stated that it was relying on section 12(1) to refuse questions four and five of the request.

9. The Commissioner therefore considers that the scope of his investigation is to determine whether UCL was entitled to rely on section 40(2) of FOIA to withhold some of the requested information for the first three questions and section 12(1) of FOIA to refuse questions four and five of the request.

Reasons for decision

Section 40 – personal information

10. 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.
11. In this case the relevant condition is contained in section 40(3A)(a). 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').
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 FOIA cannot apply.
13. 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?

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 the circumstances of this case, the Commissioner is satisfied that the information relates to the data subjects. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
19. UCL provided a table with information relating to the first three questions of the request. It explained that some of the entries in the table were marked as "five or fewer" as the exact numbers in such small quantities could reveal personal data.
20. The complainant has argued that releasing the number involved would not be personal data. They do not agree that an individual could be identified either from the actual number or from a banded number.
21. On the face of it, the withheld information does not directly identify any individual. However, because UCL has implied that the withheld numbers are low (five or fewer), the Commissioner has considered whether this information, when combined with other information either already in the public domain, or known to particular individuals, may nevertheless make identification possible.
22. UCL has explained that allegations of antisemitism in UCL have been widely reported, including in the national media. In particular, The Times ran an article titled: "I was booed in lectures for challenging anti-Israel views" and the strap line "Jewish students at UCL say they are facing rising antisemitism as Israel's invasion of Gaza goes on" on Friday 26 April 2024. It added that both the academic and student world can be tight knit communities at UCL, with significant use of social media. It therefore considers that if more specific information was released, those individuals may become identifiable based on other information which is available.
23. The Commissioner is aware that disclosure under FOIA is considered as being made to the world at large, rather than to the requester only, and this includes to those individuals who may have a particular interest in the information (and additional knowledge of the specific circumstances of those involved) which is not shared by the wider public.
24. In considering this point, the Commissioner recognises that different members of the public will have different degrees of access to the 'other information' which would be needed for re-identification of apparently anonymous information to take place. In the Code of Practice on

Anonymisation¹, he acknowledges that "...there is no doubt that non-recorded personal knowledge, in combination with anonymised data, can lead to identification."

25. The Commissioner considers that other individuals will have different levels of knowledge of UCL, the members of staff, those that attend the University and the general area. If the information were to be released by UCL, using the other information, individuals could be identified.
26. 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.
27. The most relevant DP principle in this case is principle (a).

Legitimate interests

28. In considering any legitimate interest(s) in the disclosure of the requested information under 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.
30. Issues like antisemitism can garner significant public and, indeed, personal interest. The Commissioner accepts that the complainant has a legitimate interest in the information.

Is disclosure necessary?

31. 'Necessary' means more than desirable but less than indispensable or absolute necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary.
32. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
33. The Commissioner is cognisant that disclosure under FOIA is disclosure to the world at large. It is the equivalent of UCL publishing the

¹ [Anonymisation: managing data protection risk code of practice \(ico.org.uk\)](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/10-anonymisation)

information on its website. When considering the necessity test, he is not therefore considering whether providing the information to the requestor is necessary to achieve the legitimate interest, but whether it is necessary to publish the information.

34. The Commissioner notes that, whilst UCL has not stated the specific numbers involved, it has implied that there are fewer than five that the request relates to. He is therefore satisfied that disclosure of the withheld information is necessary to meet the legitimate interest.

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

35. 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 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.
36. 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(s) expressed concern to the disclosure; and
 - the reasonable expectations of the individual(s).
37. 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.
38. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
39. The Commissioner considers that the individuals involved (both reporters of potential incidents and the alleged perpetrators), have a strong and reasonable expectation that personal information about them will remain confidential.

40. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals involved. He considers that the general interest in transparency has been sufficiently met through the information UCL has released. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
41. The Commissioner will now go on to consider UCL's application of section 12 of FOIA to questions four and five of the request.

Section 12 – cost of compliance

42. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
43. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the "appropriate limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations")
44. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for UCL is £450.
45. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for UCL.
46. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
47. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. The Commissioner considers that any estimate must be sensible, realistic and supported by cogent

evidence. The task for the Commissioner in a section 12 matter is to determine whether UCL made a reasonable estimate of the cost of complying with the request.

48. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
49. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

UCL's position

50. UCL has explained to the Commissioner that questions four and five of the request were asking for further details on denied, dismissed, and accepted cases. UCL explained that not all cases of antisemitism concerns that are reported on its 'Report + Support' portal go on to be investigated. Sometimes reports are made anonymously and sometimes those who report the incidents don't want matters taken any further.
51. UCL explained that cases that progressed to the point where they were denied, dismissed or accepted were investigated by its Student Casework Team and this team does not have a specific antisemitism category that can be used to 'tag' a report. It explained that this means the team would have to search and read all disciplinary reports (reports about students) and all complaints (complaints about staff) manually to identify any references to antisemitism.
52. UCL added that although the reports are held electronically, it would need to carry out manual searches of each report to identify any references to antisemitism.
53. UCL stated that for 2022/2023 alone, its Casework Team received more than 1000 reports in total. It estimated that each report would take around three minutes to review on average, meaning that it would take more than 50 hours to review just the 2022/2023 reports to check if they contained a report of antisemitism.

The Commissioner's view

54. Given that UCL does not routinely tag cases concerning antisemitism and the large number of records that would need to be manually searched, the Commissioner is satisfied that complying with this request would exceed the appropriate limit.

55. He considers that the UCL's estimate of the time required to comply with questions four and five is reasonable given that records will vary in length and detail.
56. Complying with the request would therefore exceed the cost limit and so UCL was entitled to rely on section 12(1) of FOIA to refuse questions four and five of the request.

Procedural matters

Section 16 – advice and assistance

57. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
58. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain, to the requester, how they could refine their request such that it would fall within that limit. In some cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.
59. In this case, UCL informed the requester that they could narrow the scope of their request by reducing the date range of the request.
60. The Commissioner is satisfied that UCL did comply with section 16 of FOIA when dealing with this request. However, he notes that even if the complainant submitted a refined request for a narrower time frame, UCL still may not be able to provide a response within the cost limit.

Right of appeal

61. 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

62. 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.
63. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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