

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 September 2024

Public Authority: The Governing Body of the University of Oxford

Address: University Offices, Wellington Square, Oxford, OX1 2JD

Decision (including any steps ordered)

1. The complainant has requested the University of Oxford (the university) to disclose emails between four named members of staff, between 1 August 2023 and 29 April 2024, relating to postdoctoral researchers and their eligibility to Congregation. The university refused the request, citing section 14 of FOIA.
2. The Commissioner's decision is that the university is not entitled to rely on section 14 of FOIA.
3. The Commissioner requires the university to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant in accordance with FOIA, which does not rely on section 14.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court

Request and response

5. On 29 April 2024, the complainant wrote to the University and requested information in the following terms:

“, I would like to issue the following ask, which can be limited according to the following:

Characteristics

A.- Scope and timing

Type of information (data): E-mails only, no need to search paper records or other

Date: From 01-08-2023 to 29-04-2024

Overall scope: Postdoctoral researchers and their eligibility to Congregation

B.- Subjects of the search

Irene Tracey, Gillian Aitken, Helen McShane, Louise Hasler

C.- Boolean logic for the search

C1.- "Congregation" AND "postdocs"

C2.- "Congregation" AND "postdoctoral"

C3.- "Congregation" AND "grade 7"

D.- Volume

If your search produces a large volume of unindexed hits, please return only the indexed

E.- Nature of the asks (two requests)

E1.- For the subjects of the search, please inform me of the number of e-mails (i.e., hits) that are returned as a result of searching according to the search operators detailed in **C.- (C1 + C2 + C3)**. Do follow the restrictions from **A.-** regarding dates and searching only e-mails. Furthermore, search only in accordance with the restriction from **D.-**

For the avoidance of doubt, an e-mail containing only the word "Congregation" but not any of the other operators would be out of

scope. At least one of the C.- conditions should be fulfilled for the e-mail to be in scope. This is a by-product of the AND operator, and an attempt to narrow down the number of e-mails your search will produce. Please conduct a case-insensitive search.

E2.- For the subjects of the search, please furnish me with the e-mails that result from the searches on **E1.-**"

6. The university responded on 29 May 2024. It refused to comply with the request citing section 14 of FOIA.
7. The complainant requested an internal review on 29 May 2024.
8. The university failed to complete the internal review by the time the matter was referred to the Commissioner.

Scope of the case

9. The complainant contacted the Commissioner on 25 July 2024 to complain about the way their request for information had been handled. They dispute the application of section 14 of FOIA.
10. The complaint was accepted for full investigation without an internal review response from the university on 29 July 2024.
11. The Commissioner considers that the scope of his investigation is to determine whether or not the university is entitled to rely on section 14 of FOIA.

Reasons for decision

12. Section 14 of FOIA states that a public authority can refuse to comply with a request which is vexatious. The Commissioner guidance¹ highlights that a single request taken in isolation may be vexatious solely on the grounds of burden. That is, where complying with the request would place a grossly oppressive burden on the public authority's resources which outweighs any value and serious purpose the request may have.

¹ [How do we deal with a single burdensome request? | ICO](#)

13. The threshold for refusing a request as “grossly oppressive” is high; much higher than for example the cost limit associated with section 12 of FOIA, which for the university is 18 hours. However, section 12 of FOIA is limited to the cost of establishing whether the information is held, locating, retrieving that information and extracting the information from information that is not in scope. The cost to redact exemption information is not a permitted task under section 12.
14. Under section 14 a public authority can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on it as an organisation. But again the threshold is high and the public authority must demonstrate that:
 - the requester has asked for a substantial volume of information; and
 - it has real concerns about potentially exempt information, which it is able to substantiate; and
 - it cannot easily isolate any potentially exempt information because it is scattered throughout the requested material.
15. The public authority then needs to demonstrate that the time it would take to process, review and prepare the information outweighs any value or serious purpose the request may have.
16. In its refusal notice to the complainant, the university stated:

In order to run a comprehensive search for correspondence within scope, it would be necessary to run searches of the email accounts of the individuals specified in your request against a combination of search terms such as those suggested. The search terms the University would need to use are likely to produce a large number of false positives because of the frequency that terms such as “grade” and “postdoctoral” are used in contexts not relevant to your request. This is likely to remain the case even if these terms are combined in searches with others.

It would then be necessary to examine all results to determine whether they are in scope. It would be necessary to isolate the relevant correspondence and to redact any personal data that was exempt under section 40(2) of the FOIA, where its disclosure would breach data protection principles, and to consider the possible application of other exemptions, such as section 36(2)(b), which protects the free and frank provision of advice or the free and frank exchange of views; section 41, which exempts information obtained from others under a duty of confidence; or section 43(2), which exempts the disclosure of

information which would prejudice the commercial interests of any person.

We consider that completing this exercise would place an undue burden on the University and represent a significant distraction from its core function. The Information Tribunal has accepted that a public authority may use section 14(1) to refuse a request that would impose a disproportionate burden, after allowing for activities that cannot be considered under section 12, e.g. the time required to consider exemptions or to redact any exempt information.”

17. The wording suggests that the university has not run the necessary searches to identify exactly what information potentially falls in scope – or even run a sampling exercise. Without doing so it is not able to demonstrate that the request involves a substantial volume of information (bullet point one of paragraph 14). Without having carried out searches, it cannot be certain that the information within scope does contain significant amounts of potentially exempt information, or that this would be burdensome to redact (bullet points two and three).
18. There is no reference to the value or any serious purpose to the request and how the time it would take to comply with the request outweighs these.
19. The Commissioner would expect a public authority to know (or to have at least made a realistic estimate of) how much information is potentially in scope and to have carried out a sampling exercise to establish the average time it takes to redact exempt information from each item. Without doing so, a public authority cannot demonstrate that compliance would be an overly burdensome task or one which outweighs any serious purpose or value it has identified.
20. The complainant disputed the application of this exemption in their request for an internal review, outlining why they considered their request is not vexatious on the basis of cost. The university had an opportunity to consider the matter again at this point and explain in more detail why it remains of the view that section 14 applies. This was an opportunity for the university to communicate the information and evidence detailed in paragraphs 14 and 15 above that supports its application of this exemption. The university did not complete the internal review process.
21. The Commissioner wrote to the university on 6 August 2024 asking it to provide detailed submissions to support the application of this exemption. It was specifically asked to provide the information detailed in paragraphs 14 and 15 above and it was referred to the Commissioner's guidance. To the date of this notice a response has not

been provided, nor has there been any contact from the university about this matter.

22. The Commissioner considers the university has had ample opportunity to provide the necessary information and to outline in detail why section 14 of FOIA applies. It has not done so. For these reasons the Commissioner has decided that section 14 of FOIA is not engaged.

Other matters

23. The Commissioner notes that the university failed to carry out an internal review. Under the Section 45 Code of Practice public authorities are advised to carry out internal reviews within 20 working days and certainly no later than 40 working days. The Commissioner would like to remind the university of the importance of carrying out timely reviews and how, in some cases, a comprehensive internal review, which addresses the complainant's outstanding concerns, can prevent section 50 complaints to the Commissioner.
24. The Commissioner would also like to direct the university to the following part of his guidance on providing advice and assistance to applicants prior to claiming section 14 of FOIA on the basis of cost and burden:

[How do we deal with a single burdensome request? | ICO](#)
25. In some cases this can lead to a better outcome for both the applicant and the public authority and prevent a section 50 complaint to the Commissioner.

Right of appeal

26. 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

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Samantha Coward
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Information Commissioner's Office
Wycliffe House
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