

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2024

Public Authority: Imperial College London
Address: South Kensington Campus
London
SW7 2AZ

Decision (including any steps ordered)

1. The complainant has requested from Imperial College London (the College) correspondence with public relations companies/individuals relating to two academic papers that were published. The College initially applied section 14 of FOIA to refuse the request, and subsequently identified and disclosed one email but denied holding any further information within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the College does not hold any further information within the scope of the request. However, in failing to confirm it holds one email and disclose it within the statutory timeframe, the College breached section 1 (general right of access to information) and 10 (timescale for compliance) of FOIA.
3. The Commissioner does not require any further steps to be taken.

Request and response

4. On 21 February 2024, the complainant wrote to the College and requested information in the following terms:

"I would like to request the following information:

All correspondence (emails, letters, etc.) between Imperial College London [redacted] and representatives of the following companies:

-v-Fluence

-White House Writers Group (WHWG)

Representatives of these companies might use email addresses with the following domain names: '@bonuseventus.org', '@v-fluence.com' and '@whwg.com'.

Representatives of these companies might include, but are not limited to, the following individuals: [redacted].

I seek all correspondence with the above-mentioned representatives relating to (referring to, discussion of, any (concept) versions of, etc.) two scientific publications:

1: 'Classification schemes for carcinogenicity based on hazard-identification have become outmoded and serve neither science nor society', published in December 2016 in Regulatory Toxicology and Pharmacology (<https://www.sciencedirect.com/science/article/pii/S0273230016303038?via%3Dihub>);

2: 'Human exposure to synthetic endocrine disrupting chemicals (S-EDCs) is generally negligible as compared to natural compounds with higher or comparable endocrine activity: how to evaluate the risk of the S-EDCs?', published June 2020 in Archives of Toxicology (<https://link.springer.com/article/10.1007/s00204-020-02800-8>)."

5. On 21 March 2024, the College responded to the request. It applied section 14 of FOIA (vexatious requests) to refuse the request.
6. On 24 April 2024, the complainant asked the College to carry out a review of its handling of the request.
7. On 26 April 2024, the College asked the complainant to confirm the scope of the request. The complainant subsequently confirmed that the scope remained the same.
8. On 10 May 2024, the College said that a search of a specific email account identified one email within the scope of the request. The complainant asked for a copy of the email. The College then disclosed a copy of the email to them on 16 May 2024.

Scope of the case

9. On 10 July 2024, the complainant contacted the Commissioner to complain about the way their request for information had been handled. Specifically, that the College has not carried out sufficient searches to

identify all the information that could be held within the scope of the request.

10. The Commissioner considers the scope of his investigation is to determine whether the College holds any further information within the scope of the request.

Reasons for decision

11. Under section 1(1) of FOIA a public authority must (a) confirm whether it holds the recorded information an applicant has requested and (b) communicate the information to the applicant if it is held and unless an exemption applies.
12. The Commissioner has sought to determine whether, on the balance of probabilities, the College holds any further information which falls within the scope of the request. Applying the civil test of 'the balance of probabilities' is in line with the approach taken by the Information Rights Tribunal when it has considered the issue of whether information is held.
13. In deciding where the balance of probabilities lies, the Commissioner will consider explanations offered by the College and the complainant, together with searches carried out by the College and any other information offered, which is relevant to his determination.

The Complainant's position

14. The complainant said that the College did not carry out adequate searches for the information but only asked a single staff member to respond to questions about whether they hold information.
15. The complainant said that it is 'impossible' this staff member contributed with 'nearly 30 authors' without communicating with the other individuals. The text of the email that was disclosed demonstrates a familiar relationship between the staff member and another individual and it would be 'strange' if that was the only email that was exchanged.
16. The complainant said that the one email that was disclosed demonstrates that the staff member was using their personal email account and not their college email account to carry out academic work to prevent information being released under the FOIA. They said that any information held in the staff member's personal email account relating to academic work would be subject to the FOIA.

The College's position

17. The College said that the staff member is an Emeritus Professor, that their involvement in the academic papers was as a college academic,

and that the scope of the request specifically relates to the publishing of the papers going back to 2016.

18. The College spoke with the staff member, who said that they asked 'colleagues' to communicate with them about the papers using their personal email address and not their college email address. They said that some emails may have been transferred from their college email account to their personal email account 'to keep them in one place' and then deleted.
19. The staff member said they only had one personal email account and its archive goes back to 2016, however, it does not contain any further emails (in addition to the one identified and disclosed) relevant to the scope of the request, and that some emails may have been deleted before the request was received. They also said that no information is or was saved in electronic and paper files or otherwise.
20. The College said that it asked the staff member to carry out 'thorough' searches of the 'entirety' of their college email account and their personal email account for information within the scope of the request. The search terms used were the titles of the academic papers, the dates: 1 May 2015 and 1 January 2021, and the names of the individuals and companies specified in the request. Any emails that were retrieved were further checked for relevance to the scope of the request. This identified the one email that was disclosed to the complainant.
21. The College said that its ICT team also carried out searches of its email server and the staff member's college email account including saved emails in the archive. The search terms used were the same as those in point 20. Emails that were retrieved were then manually checked for relevance to the scope of the request.
22. A series of emails were identified that the staff member was copied in to by some individuals named in the request. These emails relate to a workshop concerning a topic similar to that of the paper specified in the request concerning classification schemes for carcinogenicity based on hazard-identification. However, the workshop was to take place in April 2019, over two years after the paper was published. The college does not consider this information to be within the scope of the request.
23. The College said that it does not have access to search the staff member's personal email account or the server it is held on for emails including any that may have been deleted. It however has no reason to doubt that the staff member carried out the searches as requested, nor to believe that additional emails relevant to the scope of the request were identified and withheld or destroyed after the request was received.

24. The College provided a copy of its 'Code of Practice 2: Electronic Messaging' containing its archiving, retention and deletion policy which explains what emails are retained and deleted.

The Commissioner's view

25. The Commissioner notes the complainant's view that the one disclosed email demonstrates a 'familiar relationship' between the staff member and another individual. However, this does not confirm that any further communication between the parties about the publishing of the academic papers is held by the staff member or by the College.
26. The Commissioner notes that the scope of the request specifically covers correspondence between the staff member and the companies or individuals listed, relating to the publication of the academic papers in 2016 and 2020. It does not include general correspondence between the staff member and others, even if it covers similar topics to the content of the papers. He also notes that the request was made in 2024, eight years after the first paper was published, and four years after the second.
27. The Commissioner notes that if any information relevant to the scope of the request is still held, that it would likely be held electronically in the staff member's personal and college email accounts.
28. The Commissioner notes the searches carried out by the staff member of both their personal and college emails accounts, and the separate searches carried out by the College's ICT team. He also notes the search terms that were used, the likelihood that they would identify any relevant emails that are held, and the further checks of the emails that were retrieved. He also notes the one email that was identified and disclosed.
29. The Commissioner has reviewed the series of emails identified by the college. These relate to a workshop (covering a similar topic to that addressed in one of the papers) and personal matters, and were sent two years after the staff member's paper was published.
30. The Commissioner notes that the complainant has not suggested any motive for the staff member to withhold any information relevant to the scope of the request, nor is there any evidence of a motive, or that information has been withheld. He also notes that the staff member confirmed that they had not deleted any emails since the request was received, and that there is no evidence that any further information was previously held but has now been deleted. He again notes the one email that was identified and disclosed.
31. The Commissioner notes that under section 3 of the College's 'Code of Practice 2: Electronic Messaging' it states that any emails that have not

been deleted and are older than two years will be archived indefinitely unless the email account holder opts for them to be deleted after 5 or 10 years. He also notes the ICT teams searches of the server/staff member's college email account archive and that no information relevant to the scope of the request was found.

32. For the reasons given above and taking into account that the complainant has offered no evidence to the contrary, it is the Commissioner's view that on the balance of probabilities, the College does not hold any further information within the scope of the request.
33. However, by failing to confirm in its initial response that it held the one email that was subsequently disclosed, the College has breached section 1(1) of the FOIA.

Procedural matters

34. Section 1 of FOIA states that, upon receipt of a request under FOIA, a public authority must confirm or deny whether the requested information is held and, if it is held, communicate said information to the requestor unless a valid exemption applies.
35. Section 10 of FOIA states that section 1 must be complied with as soon as possible, and no later than 20 working days after the day the request is received.
36. In failing to confirm to the complainant one email was held and disclose it within twenty working days, the College breached section 1 and section 10 of the FOIA.

Other matters

Information held in private email accounts

37. The College said that information held in staff personal email accounts is not subject to its information processing or retention policies. However, after establishing that the staff member's involvement in the academic papers was as a college academic, it accepted that any information held would be subject to the requirements of the FOIA.
38. The Commissioner would draw attention to his published guidance on [Official information held in non-corporate communications channels](#). It is important that the College has robust rules in place governing the use of official information and that it takes appropriate steps to ensure that those rules are followed.
39. If the College is unable to access some of its own records, because they have not been stored in appropriate corporate channels, it is at risk of failing to comply with its responsibilities under FOIA – as occurred here.

Right of appeal

40. 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

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Roger Cawthorne
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