

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 September 2018

Public Authority: Durham University
Address: Stockton Road
Durham
DH1 3LE

Decision (including any steps ordered)

1. The complainant requested information on the correspondence from a named Professor. Durham University (the University) initially confirmed that it did not hold any information but on internal review found and disclosed some information. The complainant considered that more information must be held. The Commissioner's decision is that the University does not hold any further information in this case. The Commissioner does not require the University to take any steps.

Request and response

2. On 17 November 2017 the complainant requested the following information:

'1) Copies of correspondence regarding the economics of Brexit between Professor Kevin Dowd of Durham University Business School and the following individuals:

- Professor Patrick Minford
- Professor Kent Matthews
- Rt. Hon. Owen Paterson MP
- Jacob Rees-Mogg MP
- Viscount Matt Ridley
- John Longworth
- Roger Bootle
- Professor David Paton
- Edgar Miller
- Prof. Patrick Minford
- Prof. Kent Matthews

Between 15 July 2017 – present.

2) Copies of all correspondence containing reference to "Economists for Free Trade" between 1 August – 31 August 2017 and October 15 – November 15 2017.'

3. On 13 December 2017 the University responded that it was unable to provide the requested information as *'this information is not held. The correspondence in question is not related to the business of Durham University therefore falls outside the scope of the Freedom of Information Act 2000.'*
4. The complainant requested an internal review on 13 January 2018.
5. On 9 February 2018 the University reconsidered the request in its internal review and disclosed all the correspondence that was identified as held by the University in relation to the request to the complainant. The disclosed information consisted of 2 email chains from autumn 2017.

Scope of the case

6. On 14 March 2018 the complainant contacted the Commissioner and argued that *'we believe that there is further information that has not been disclosed.'*
7. The Commissioner has considered that the scope of the case, with regard to section 1(1) of the FOIA, is whether or not the University holds additional, relevant information that it has not disclosed to the complainant.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

8. Section 1 of the 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.
9. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.

10. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
11. As is the practice in a case such as this, the Commissioner asked the University a number of questions to confirm/establish if further information is held. The University confirmed that it did not hold any further recorded information falling within the scope of the request.
12. The Commissioner asked the University a number of questions to establish what searches had been carried out for information falling within the scope of the request. The University stated that:

'A search was carried out of all emails in the user's mailbox including the deleted items folder. There is no paper correspondence held. The search was carried out using the specific search terms provided by the requester.'

'The search was carried out on the user's mailbox which is held on the university network server. No correspondence has been saved outside of the email system.'

'For question 1 of the FOI request we searched for the names provided. For question 2 of the FOI request we searched for the terms "Economists for Free Trade" as requested.'
13. The University stated that the searches had retrieved all the information pertinent to the request: *'the information held and provided were stored on the mail server in electronic format'.*
14. The Commissioner asked questions on whether any recorded information ever held relevant to the scope of the request had been destroyed. The University answered: *'No, but for completion a search of deleted folders was undertaken.'*
15. The Commissioner asked about the University's formal records management policy on the retention and destruction of records of this type. The University answered:

'The Records Management Policy advises that business emails are kept in structured format and disposed of in accordance with university Records Retention Schedule.'
16. In addition the University stated that there is no business purpose for which the requested information should be held and no statutory requirements: *'the information requested and provided does not fall*

under the category of business emails therefore are not subject to the policy or retention schedule.'

17. During the investigation the Commissioner spoke to the public authority which confirmed that during the internal review process, it had found and disclosed some information.
18. Having considered the University's responses to the Commissioner's investigations, the Commissioner is satisfied that, on the balance of probabilities, the University does not hold any further recorded information within the scope of the request.
19. The Commissioner notes that one of the email chains provided to the complainant was not direct correspondence to or from Professor Dowd but he was copied into correspondence between two of the other names listed in the part one of the request. Therefore the Commissioner is satisfied that the University has made a thorough search for the requested information and provided what was found.
20. The Commissioner understands the reasons why the complainant considers further information may be held, but the Commissioner can only consider what is held. It is outside the Commissioner's remit to determine if it should be held, and even if it should be, she cannot require a public authority to create the information under the FOIA.
21. As the Commissioner's decision is that further information is not held, the Commissioner does not require the University to take any steps.

Right of appeal

22. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

23. 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.
24. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF