

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 August 2020

Public Authority: Board of Trustees of the University of London
Address: Senate House
Malet Street
London
WC1E 7HU

Decision (including any steps ordered)

1. The complainant requested a variety of information relating to the student records of the current Taiwanese President Tsai Ing-wen. The University of London ("the University") refused the request, because it considered that answering the request in full would exceed the appropriate cost limit.
2. The Commissioner's decision is that University has reasonably estimated that the cost of complying with the request would exceed the appropriate limit. It is therefore entitled to rely on section 12 of the FOIA to refuse the request. However, she also finds that the University did not comply with its duty, under section 16 of the FOIA, to provide advice and assistance. Finally, the Commissioner finds that the University failed to issue its refusal notice within 20 working days and thus breached section 17(5) of the FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 7 October 2019, the complainant wrote a seven-page letter to the University. The letter set out numerous categories of information that the complainant wished to obtain as well as setting out her justification for why the information should be provided. The types of information requested were varied but were all connected to President Tsai's record

as a student.¹ Given the length of the request, the Commissioner considers it neither necessary nor desirable to reproduce the original request in full here, but it is pertinent to note that, as part of her justification, the complainant asked two further questions ("the Additional Questions") of the University:

"(ii) In the history of the University of London and the LSE, how many students whose PhD theses had never been received or disappeared all together from the University of London and the LSE, including the Senate House Library, the IALS, the LSE library and the British Library?"

"(iii) In the history of the University of London and the LSE, how many students who have presented copies of their PhD thesis more than 30 years after they were awarded PhD degrees?"

5. On 1 November 2019, the University responded. It asked the complainant to clarify her request and, in particular whether she intended the Additional Questions to form part of her request for information. The complainant responded on the same day to confirm that she did wish to include the Additional Questions as part of her request.
6. The University then issued its formal response to the revised request on 3 December 2019. It refused the request, relying on section 12(1) of the FOIA to do so. The University did provide some of the requested information and also pointed the complainant to information in the public domain which might be of interest to her.
7. The complainant sought an internal review on 5 December 2019. The University completed its internal review in March 2020. It upheld its original position, but this time indicated that it was the Additional Questions that were causing the cost limit to be exceeded.

Scope of the case

8. The complainant first contacted the Commissioner on 20 November 2019 to complain that the University had yet to respond to her request. The Commissioner's intervention was then necessary to obtain a
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¹ President Tsai was a PhD student at the London School of Economics during the 1980s. At that time, the LSE did not itself have degree-awarding powers and degrees were therefore conferred by the University of London.

response from the University. Once the initial response was obtained, the Commissioner advised the complainant that she must first seek an internal review before her complaint could be accepted. When the University failed to complete its internal review within a reasonable timeframe, the Commissioner's intervention was required a second time – she comments further on this issue under "Other Matters".

9. Once the internal review was complete, the complainant asked the Commissioner to investigate her complaint further. She considered that the University should not have been able to rely on section 12 to refuse her request as she had been "tricked" into broadening her original request.
10. On 12 June 2020, prior to opening her formal investigation, the Commissioner wrote to the complainant to set out her initial view of the complaint. She noted that answering the Additional Questions alone would require the University to review every single thesis it had ever received in the history of its existence. As the University was established by Royal Charter in 1836 and began awarding degrees in 1839, it would need to search almost 200 years' worth of records. The Commissioner further noted that, based on the available evidence, it did not seem unreasonable for the University to ask the complainant to clarify her request and that the complainant had included the Additional Questions of her own free volition. The Commissioner therefore advised the complainant that, given the circumstances, it would be more practical for her (the complainant) to make a fresh, narrower, request for information.
11. The complainant disputed the Commissioner's view that the request for clarification was reasonable. She argued that she was willing to narrow her request for information (without the Additional Questions) and that it was the responsibility of the Commissioner to put this narrower request to the University.
12. The Commissioner noted that her role was to assess whether the University of London had complied with the request that the complainant had actually submitted – which included the Additional Questions – and not to make requests on anyone's behalf. She noted to the complainant that, if a refined request, excluding the Additional Questions, were considered by the University there was a high likelihood that the University may wish to rely on an exemption to withhold some of the requested information – meaning that the chances of the complaint being resolved informally was low. Based on her previous experience of the complainant, the Commissioner also considered that she (the complainant) might wish to dispute the amount of information that was held. Therefore, by making a fresh request, the complainant would

preserve her right of a further appeal to the Commissioner in order to challenge those exemptions and the extent of information held.

13. The complainant did not accept the Commissioner's suggestion and insisted that she wished to exercise her right to have the Commissioner reach a decision on her complaint.
14. The Commissioner considers that the scope of this notice is to determine whether the University has reasonably estimated that complying with the request would exceed the appropriate limit.

Reasons for decision

Section 12 – Cost of Compliance Exceeds Appropriate Limit

15. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

16. Section 12 of the FOIA states that:

- (1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.*
- (2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.*

17. The "Appropriate Limit" is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") and is set at £450 for a public authority such as the Council. The Regulations also state that staff time should be notionally charged at a flat rate of £25 per hour, giving an effective time limit of 18 hours.

18. When estimating the cost of complying with a request, a public authority is entitled to take account of time or cost spent in:

- (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.
19. 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. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence".² The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
20. The Commissioner asked the University to explain, with reference to the four permitted activities set out above, how it had arrived at its estimate.
21. The University explained to the Commissioner that:

"The University have on records thousands of PhD theses held in multiple libraries. The historic nature of the federal University structure means that some theses may be now part of colleges which are separate public authorities for the purposes of FOIA.

"The University holds theses and academic records across multiple library collections. Whether we hold information related to the questions involved in this part of the request ("how many students whose PhD theses had never been received or disappeared all together" and "how many students who have presented copies of their PhD thesis more than 30 years after they were awarded PhD degrees") require a case by case analysis of the circumstances around each thesis."

² <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

22. The University then explained that once relevant information had been located:

"there may be a reasonable 24-48 hour retrieval for offsite storage records and a search of the relevant files."

23. Finally, it explained that once relevant information had been located and retrieved, extracting the requested information would take around 30 minutes per case – although it had not carried out a sampling exercise to confirm this.
24. The complainant has argued that the University should be able to comply with the Additional Questions because she already knows the answer. According to her, the answer to both questions is "no."
25. Leaving aside the question of how a question that requires a number as an answer could be answered with the word "no", the Commissioner considers that the complainant's arguments are misconceived. The answers to the Additional Questions are not to be found in the University's regulations and policies – as the complainant suggests – but in the actual records it holds. The complainant's request does not ask about the records the University *should* hold if it had followed every procedure correctly for 200 years, the request asks what information the University *does*, as a matter of fact, hold.
26. In the Commissioner's view, it would not be sufficient for the University to merely consult its digital records to answer the request. The first of the Additional Questions seeks instances where the thesis has "disappeared altogether." Therefore the Commissioner would expect the University to check not only whether the thesis was recorded on its digital catalogues (assuming all such theses are recorded), it would also need to locate the physical copy to ensure that it was where it should be and that it had not, unbeknownst to the librarians, "disappeared altogether" by being removed from the library or mis-shelved within it.
27. The complainant was specific in her request that she wanted to information relating to the University's "entire history." The Commissioner notes that the University's "entire history" spans more than 180 years. Complying with the request within the 18 hour limit would allow the University just a single hour to cross-reference ten years' worth PhD students' records, to confirm whether or not their theses had been received in the first place and to confirm that each thesis was in its proper place and had not "disappeared altogether".

Given that the University currently awards around 20 PhDs per year³, the Commissioner notes that this would amount to 200 PhDs being checked per hour. She considers that this is an unrealistic expectation.

28. The Commissioner is therefore satisfied that the University has reasonably estimated that the cost of compliance would exceed the appropriate limit. The University was therefore entitled to rely on section 12 of the FOIA to refuse the request.

Section 16 – advice and assistance

29. Section 16 of the FOIA requires public authorities to provide “reasonable advice and assistance” to those making, or proposing to make, information requests.
30. The Commissioner considers that what constitutes “reasonable” advice and assistance will vary according to the circumstances although where a public authority complies with the Code of Practice issued under section 45 of the FOIA, it will be taken to have complied with its section 16 duty. The section 45 Code of Practice identifies two factors which the Commissioner considers relevant to the current complaint: the duty to clarify requests and the duty to help requestors refine requests which cannot be answered within the cost limit.
31. Having read the entire letter that the complainant sent on 7 October 2019, the Commissioner is satisfied that the request was unclear and therefore required clarification. Specifically, it was unclear whether the Additional Questions were seeking recorded information or whether they were a rhetorical flourish.
32. The Commissioner’s guidance on interpreting and clarifying requests states that:

“When an authority receives an unclear or ambiguous FOIA request, its Section 16 duty to provide advice and assistance will be

³ Although the University explained that it *currently* awards around 20 PhDs per year, because of its structure as a federation and the fact that it previously awarded degrees on behalf of other bodies (such as the LSE), that figure would have been considerably higher prior to 1990. It estimated that it had records pertaining around 100,000 PhD theses.

*triggered and it **must** go back to the requester to ask for clarification.*"⁴ [emphasis added]

33. The fact that, having had the opportunity to reflect on the matter, the complainant decided that she *did* wish to have the Additional Questions addressed as part of the University's response demonstrates, in the Commissioner's view, that it was reasonable for the University to clarify whether this was the case or not.
34. It is regrettable that that the University took until the 19th working day to decide that the request needed clarifying. The Commissioner would draw the University's attention to the Code of Practice which states that:

*"...it is important that the applicant is contacted **as soon as possible**, preferably by telephone, fax or e-mail, where more information is needed to clarify what is sought."* [emphasis added]

35. Nevertheless, the Commissioner considers that, not only did the University not breach its section 16 obligations by seeking the clarification that it did, but that it *would* have breached its obligations if it *hadn't* sought clarification.
36. Next the Commissioner considered whether, having decided that the cost limit was engaged, the University provided the complainant with reasonable advice and assistance to help her refine her request. She considers that it did not.
37. The section 45 Code of Practice makes clear that:

*"Where it is estimated the cost of answering a request would exceed the 'cost limit' beyond which the public authority is not required to answer a request (and the authority is not prepared to answer it), public authorities should provide applicants with advice and assistance **to help them reframe or refocus their request with a view to bringing it within the costs limit.**"* [emphasis added]

38. When it initially refused the request, the University pointed the complainant towards information relevant to President Tsai's record as a student which was already published. It also noted that it considered

⁴ <https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

that the information it had not already published would, in any case likely be exempt from disclosure under section 40(2) of the FOIA.

39. The Commissioner is aware from similar cases that, in the lead up to the Taiwanese presidential election in late 2019, both the University of London and the LSE received very high volumes of requests and enquiries related to President Tsai's time as a student. In a bid to reduce that burden, both organisations published some of the information they held so that it could be accessed without the need for a formal information request.
40. The complainant was dissatisfied with this approach as she claimed that, in effectively choosing what information she would receive, the University had "robbed" her of her right to reframe the request to target the information that she was interested in.
41. In its internal review, the University implied that it was the Additional Questions that were causing the cost limit to be breached, although it did not say explicitly whether it could have responded to the original request (of 7 October 2019) – although the University has since confirmed to the Commissioner that the original request would have been unlikely to exceed the cost limit.
42. Whilst the University may consider (and may be correct to consider) that removing the Additional Questions from the scope of the request would not result in the complainant receiving additional information, it was still obliged to help her refocus her request within the cost limit. If, having refined her request, the University were to cite an exemption to withhold information, the complainant would then have the opportunity to challenge that exemption in a complaint to the Commissioner.
43. The complainant implied that she had only expanded her request because the University "encouraged" her to do so and that it should therefore not have been entitled to rely on section 12. The Commissioner rejects this argument. It should have been obvious to any reasonable person that adding elements with such broad time parameters to a request would create a substantial burden. The complainant was under no obligation to expand her request, yet did so anyway.
44. However, by the same token, it should have been equally, if not more, obvious to the University that adding two exceptionally broad elements, to an already substantial request, would be likely to cause that request to exceed the cost limit.
45. Whilst the University was entitled to clarify the request, the Commissioner considers that it should also have advised the

complainant simultaneously of the potential consequences of expanding her request. Given that the University had already had 19 working days in which to consider the request, before seeking clarification, the Commissioner considers it even more reasonable to have expected the University to have drawn this burden to the complainant's attention.

46. The Commissioner therefore finds that the University failed to provide reasonable advice and assistance and thus breached its duty under section 16 of the FOIA.
47. Having found a breach of section 16, the Commissioner then considered whether it was appropriate to order the University to take any remedial steps. She concluded that it was not.
48. As a result of the analysis in this decision notice, the complainant has been provided with sufficient information to help her bring her request within the cost limit – should she wish to do so. The Commissioner therefore considers that it would be disproportionate to order the University to take further steps to remedy its breach.

Procedural Matters

49. Section 17(5) of the FOIA states that:

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

50. A public authority has up to 20 working days to comply with its section 1(1) duty, excluding the day on which the request was received. The complainant submitted her revised request on Friday 1 November 2019 and thus the 20 working days commenced on Monday 4 November 2019. The University did not issue its refusal notice until 3 December 2019 – the 22nd working day – and therefore breached section 17(5) of the FOIA.

Other matters

Internal review

51. Whilst there is no statutory time limit for completing an internal review, the Commissioner considers that reviews should normally be completed within 20 working days and should never take longer than 40 working days.
52. The University took three months to complete its internal review of this request. The Commissioner considers this to be poor practice.

Personal Data

53. It is entirely at the complainant's discretion as to whether she chooses to submit a refined request for information or not. However, should she choose to do so, she should be mindful of decision notice FS50908339, where the Commissioner found that the detailed records of President Tsai's student days were her personal data and that disclosure would breach the GDPR principles.⁵ That decision notice has not been appealed.

Resolving cases informally

54. The complainant, during the course of this complaint, queried why the Commissioner had not attempted to resolve the complaint informally with the University.
55. The Commissioner always encourages both parties to a complaint to be willing to compromise where possible. The most common ways of securing an informal resolution are when the public authority feels able to make a disclosure which is acceptable to the complainant or where the complainant accepts that pursuing the particular complaint would not be worthwhile. However she recognises that it is not always possible to bring about such a resolution.
56. In this particular case, whilst the Commissioner notes that the complainant was willing to receive less information than she originally asked for, she (the Commissioner) considered that this concession alone was unlikely to bring about a disclosure that would have been acceptable to all concerned – given the likelihood that section 40(2)

⁵ <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2617860/fs50908339.pdf>

would apply to some of the information within scope. The Commissioner would be unable to test the use of that exemption – given that the University would be entitled to point out that it had originally relied on section 12.

57. In this particular case, the Commissioner's suggested means of resolving the complaint informally was to recommend that the complainant make a fresh request and, if she did not receive a satisfactory disclosure, a fresh complaint – where section 40(2) could have been further considered. The complainant (as is her right) did not accept this suggestion, but that does not mean that the Commissioner did not attempt to resolve the matter informally.

Right of appeal

58. 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@justice.gov.uk

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

59. 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.
60. 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

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