

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 October 2021

Public Authority: The Governing Body of University College
London

Address: Gower Street
London
WC1E 6BT

Decision (including any steps ordered)

1. The complainant has requested from University College London (UCL) information about the Coronavirus Mitigation Group (CMG). UCL denied holding the requested information.
2. The Commissioner's decision is that UCL has failed to issue a response to the request that complies with the requirements of section 1(1) of the FOIA.
3. The Commissioner requires UCL to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request that does not rely on the assertion that UCL does not hold information within the scope of the request on the basis that the CMG was not a formal group.
4. The public authority must take these steps within 35 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 27 July 2020, the complainant wrote to UCL and requested information in the following terms:

"Under the terms of the UK Freedom of Information Act, 2000, I would like to request the following information about UCL's Coronavirus Mitigation Group:

Information regarding the makeup of the Coronavirus Mitigation Group - who the members of the group are, their positions in the group, and what other connection/posts they hold at UCL and/or elsewhere.

I would also like to request all information about the Coronavirus Mitigation Group, including, but not limited to, the group's mandate, minutes of meetings held by the group, the matters discussed, and the basis for decisions taken by the group regarding UCL's response to coronavirus and subsequent implementation of policies such as social distancing and the mandatory wearing of face coverings on campus."

6. On 8 September 2020, UCL responded to the request. It failed to confirm or deny whether it holds information within the scope of the request. It instead provided a link to a page of its website containing details of UCL's 'Crisis Management Structure' in response to the Coronavirus Pandemic (the pandemic). It said that the CMG's role was to support the 'structures' mentioned in the webpage by signing-off communications sent out in relation to UCL's response to the pandemic.
7. On 20 October 2020, UCL completed a review of the request and wrote to the complainant. It denied holding the requested information. It said that despite 'the very limited references to the 'CMG' that she had identified, the CMG was not a formal group.

Scope of the case

8. On 11 November 2020, the complainant contacted the Commissioner to complain about the way her request for information had been handled.
9. The initial scope of the Commissioner's investigation was to determine whether or not UCL held any information within the scope of the request. However, throughout the course of her investigation, UCL has vehemently argued that it does not hold any information because the CMG was not a formal group. She has therefore had to revert to

considering whether UCL's response to the request complies with the requirements of section 1 of the FOIA.

Reasons for decision

10. Section 1 of 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."

11. Section 3(2) of the FOIA states that

"For the purposes of this Act, information is held by a public authority if –

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."

Complainant's view

12. The complainant said that the link UCL provided to the 'Crisis Management Structure' does not contain any information within the scope of the request, e.g., it does not identify members of the CMG, and how and why policies were implemented.

13. The complainant said that the CMG sent UCL students regular emails from the start of the pandemic in February 2020. These emails contained actions the university would be taking, including policies it would be implementing, such as its mandatory face covering policy. The emails did not identify who the members of the CMG were, and they did not explain how and why decisions were made about the policies.

14. The complainant said that it is standard practice for UCL to record meetings in minutes, particularly where a matter of policy is being discussed and decided. She does not believe that the CMG was having meetings where it was discussing and deciding upon UCL's policies in response to the pandemic, and that there is no record of them. She said that students are entitled to know the identify of individuals making decisions, and how and why decisions were made. This is because, UCL

is a publicly funded institution, students pay fees for their education, and that the decisions made impacted them personally.

15. The complainant said that UCL committee minutes show that the CMG was set up with the purpose to manage UCL's response to the pandemic. However, UCL said that the minutes were 'incorrect' but failed to explain how they were incorrect. The complainant also provided two images of screen shots taken from the 'University of London branch of Independent Workers Union of Great Britain' webpage. They show that the CMG invited trade unions to become a part of the group. The complainant said that the minutes and webpages are evidence that the CMG existed and was arranging meetings, and therefore the information she requested exists.

UCL's position

16. UCL said that there was no formal group known as the CMG. It said that CMG was an 'unofficial title' created by its Communications Team as a 'closing on communications' (sign-off) being sent out to the UCL community about the pandemic. It said that the term 'CMG' was used between February and March 2020 (at the start of the pandemic) as 'a shorthand' for ('a temporary way of referring to') a small informal group of individuals that were senior figures / in key leadership positions who, came together in line with their roles and delegated authorities. They were keeping the pandemic under review ('maintaining a watching brief') and communicated decisions to the UCL community which had been taken in a 'fast-moving situation'.
17. Once it became clear there was a substantial emergency, UCL moved to the 'crisis management structure' set out on the UCL webpage that it sent the complainant a link to.
18. UCL said that it continued to use the term 'CMG' as a short hand and sign-off on its daily newsletter update after March 2020. It said that the 'CMG' was therefore a temporary way of referring to individuals with responsibility for particular actions, rather than a formally constituted group. It provided the names and roles / job titles of these individuals to the Commissioner.
19. The Commissioner noted that on the UCL webpage titled 'Important advice – UCL and Coronavirus (COVID-19) mitigation measures' it stated in regard to 'hotdesking' and other matters relating to the pandemic:
20. "We are awaiting formal confirmation from the UCL Coronavirus Mitigation Group but urge colleagues to take action in the interim, consulting their line manager as appropriate", and "Representatives

from campus trade unions have been invited by UCL to join meetings of the Coronavirus Mitigation Group and have accepted the invitation."

21. UCL acknowledged that the council note on the webpage refers to actions of the CMG, and said that when the scale of the pandemic became clear and by the time the action was taken (the meeting with trade unions had taken place), UCL had appropriate crisis management leadership in place. It provided the Commissioner with the same link it sent to the complainant. It said that the CMG was not part of its crisis management structure, but that the CMG had invited trade unions to join the crisis management structure. It said that the 'discrepancy' between what happened in practice and the Council minute was because of a 'swiftly changing situation', meaning that the CMG was 'superseded' before any meetings took place.
22. The Commissioner also noted that at point 51.1.3 in UCL's Council meeting minutes of 14 February 2020, it stated "*A Coronavirus Group had been set up to establish a mitigation plan to address the consequences which were already being felt*".
23. UCL re-iterated that this reference to the CMG related to a 'small group of individuals who were tasked to maintain a watching brief on the developing pandemic'. It however also said that this group included representation from the Students' Union UCL, so that their advice could be considered as the pandemic evolved, and that 'as decisions started to be taken, this group was for a very short time the place decisions were discussed, but that any decisions were taken by individuals in their leadership roles in the university rather than by the group itself'. When it became clear more formal structures were required the Crisis Management Structure was put in place. It said that the Council minutes were 'confusing' and that it intended to clarify this in its response to the complainant.
24. The Commissioner asked UCL to confirm whether the CMG conducted / attended meetings. UCL said that there were no meetings of the CMG. It re-iterated that the group were keeping the pandemic under review, but then said "the same group of individuals also discussed other topics of consideration for UCL, unrelated to the pandemic." It said that as this was an informal arrangement, there were no minutes of any of these discussions but some informal notes of action points were made.
25. The Commissioner asked UCL, if, the CMG had not convened any meetings, then how could there have been an 'informal arrangement' where discussions had taken place and notes of actions points made. She also asked it to provide her with a copy of the informal action points that were made. UCL re-iterated that the CMG was not a formal group

and that it ultimately moved to the crisis management structure. It said 'we are not saying there was no group in UCL dealing with the Coronavirus related matters, however these were dealt with by a separate group which was not called the Coronavirus Mitigation Group and formed part of the crisis management structure which operated to deal with Coronavirus'.

26. In regard to the notes of action points. UCL said that, the CMG was a temporary way of referring to those individuals with responsibility for particular actions, rather than a formally constituted group with minutes, actions, logs etc. It claimed that because of this, there are no available notes of actions nor any centrally held records of these actions.
27. UCL also said that the individuals who were involved in preparing communications to UCL about the pandemic may have taken 'personal notes' directly relevant to their own areas of responsibility, and "Such notes may have either simply been remembered by staff members without being noted down, or they may be written in personal notebooks or other storage methods." UCL claimed that, to obtain any 'informal' notes, would require it to 'request them from each relevant member of staff who may have met with other staff members', and that this is 'likely to be a significantly time consuming process' as any notes will be more than 18 months old, and that this is not something it would be able to achieve in the timescale provided. It also claimed that undertaking this work would also require a substantial amount of time and cost.
28. The Commissioner asked UCL a series of questions to confirm what searches it had carried out to check if information within the scope of the request was held, she also said that if inadequate searches were undertaken, to rectify this and let her know the outcome.
29. UCL said that it undertook 'appropriate searches' for the requested information. It said that 'searches' consisted of discussing the crisis management responses with relevant senior members of staff who were involved with its response to the pandemic, and because of this searches of records were not in fact required as it was able to speak with the relevant decision makers. UCL said that it does not believe that any relevant information has been deleted or destroyed. When asked if there a business and / or statutory purpose for which the requested information should be held, UCL replied that details of its response to the pandemic are currently held publicly on its website. It also confirmed that the CMG did not have a mandate.

The Commissioner's decision

30. The Commissioner notes that although UCL regards the CMG as an 'informal group', it has nevertheless confirmed that the group did in fact exist for a period of time (between February – March 2020), before the Crisis Management Structure was formed.
31. The Commissioner notes that the title 'CMG' was created by an official department (the Communications Teams) within UCL as a 'closing on communications' (sign-off) conveying the group's formal response to the pandemic on behalf of UCL to the UCL community.
32. The Commissioner has reviewed the list of names / job titles of UCL CMG members. She notes that the CMG consisted of more than two individuals and was therefore a group. She also notes that although UCL said that this was an 'informal group of individuals' that they were undertaking 'roles and delegated responsibilities' assigned to them as part of the CMG. The official positions of these individuals within UCL (including their seniority and key leadership positions) suggests that there would have been a reasonable expectation that these individuals would be making decisions / would be part of any decision making process as part of their official roles in UCL's response to the pandemic, and not only communicating the decisions of others. She also notes that UCL said that the CMG included representatives from the Students' Union that 'could advise leaders'.
33. The Commissioner is also reminded that the pandemic was an unprecedented global issue that saw many public bodies responding with both interim and later more fixed management strategies. UCL said that members of the CMG were keeping the pandemic under review in-line with their 'roles and delegated responsibilities', and the CMG was signing-off communications sent to the UCL community about the pandemic. UCL therefore appears to have regarded the pandemic as an official matter, kept it under review by members of the CMG and then communicated any decisions / response signed-off by the CMG.
34. The Commissioner notes that although the CMG said that group members made decisions independently of the group and then communicated them via communications signed-off by the CMG, it also said 'as decisions started to be taken, this group was for a very short time the place decisions were discussed'.
35. The Commissioner also notes evidence on UCL's website and confirmation provided by UCL, that the CMG were organising meetings, e.g., with representatives of the Students' Union, who were also invited to be a part of the CMG, so that 'they could advise leaders' who could

then make informed decisions, albeit that by the time the meeting had taken place, the CMG had been superseded by the crisis management structure.

36. With regard to UCL Council's meeting minutes of 14 February 2020 and the explanation provided by UCL. The Commissioner acknowledges the purpose for which the CMG was set up (even if for a limited period and even though superseded by the Crisis Management Structure). That is, that it was a group of senior officials responding to the pandemic, and ultimately was a place where some decisions were discussed. This is because, UCL confirmed that decisions were made by senior officials who were a part of the CMG, that these decisions followed discussions with the CMG, and that these decisions were then communicated to the UCL community by the CMG, and not any particular UCL senior official. Also, despite UCL saying that it accepts that the minutes are 'confusing' and that it intended to clarify this to the complainant, the Commissioner notes that the UCL webpage concerned to date appears uncorrected or annotated about the CMG.
37. The Commissioner notes that UCL has contradicted itself in its responses about whether the CMG conducted / attended meetings. It said that there were no meetings of the CMG, and the meetings that were held were only attended by those individuals preparing communications to UCL. It however also said "the same group of individuals also discussed other topics of consideration for UCL", and that the CMG "was for a very short time the place decisions were discussed, but that any decisions were taken by individuals in their leadership roles in the university rather than by the group itself". The CMG therefore appear to have convened meetings in which discussions took place that led to decisions about the pandemic.
38. The Commissioner has considered the role / activities of the CMG as described by UCL. She notes that the role changed from reviewing the situation with the pandemic, to providing / signing off responses about the pandemic, to being a place where 'decisions were made', to organising meetings and inviting other organisations to them etc. She is also reminded that the CMG existed before the crisis management structures were formed, and therefore its purpose does not appear to have solely been to support these structures by signing-off communications.
39. In regard to notes taken by members of the CMG; the Commissioner notes that the CMG changed its stance from 'notes of informal action points were made' to these notes not being centrally held and the possible existence of 'personal notes' (as opposed to action points) held by individuals who attended the meetings. The Commissioner is

reminded by the list of group members provided by UCL that there is a very limited number of individuals who would have attended these meetings (and that it is irrelevant whether these group members then went on to meet with other members of staff).

40. The Commissioner notes that UCL said it carried out appropriate searches for the requested information, however, it then said that it had in fact only discussed the crisis management responses with relevant senior members of staff that were involved with UCL's response to the pandemic, and because of this searches of records were not in fact carried out ('not required'). UCL also failed to confirm whether or not there was a business and / or statutory purposes to hold the requested information, it only stated that details of its response to pandemic are held publicly on its website. It therefore appears that the action UCL took to identify whether it holds any information within the scope of the request was, limited to a consultation with members of staff and its own interpretation that the CMG was not an official group, as opposed to performing searches in accordance with those indicated by the Commissioner.
41. For the reasons set out above, the Commissioner does not accept UCL's assertion that it does not hold information within the scope of the request on the basis that the CMG was an informal group. It is her view that by failing to correctly confirm or deny whether the requested information is held, or apply an exemption to refuse the request, UCL has failed to issue the complainant with a response compliant with the requirements of section 1(1) of the FOIA.

Right of appeal

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

43. 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.
44. 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**