

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 March 2025

Public Authority: The Governing Body of the University of Oxford

Address: Wellington Square
Oxford OX1 2JD

Decision (including any steps ordered)

1. The complainant has requested information associated with particular meetings. The University of Oxford ('the University') disclosed some information and withheld the remainder under sections 31(1), 36(2)(b), 40(2) and 43(2) of FOIA. These exemptions concern law enforcement, prejudice to the effective conduct of public affairs, personal data, and commercial interests respectively.
2. The Commissioner's decision is as follows:
 - The University is entitled to rely on sections 36(2)(b)(i) and 36(2)(b)(ii) to withhold information within scope of the complainant's request.
 - Section 40(2) isn't engaged in respect of the information redacted from material that the University disclosed.
 - The University hasn't disclosed all the relevant, non-exempt information within FOIA's 20 working day requirement and so has breached sections 1(1) and 10(1).
3. The Commissioner requires the University to take the following steps to ensure compliance with the legislation:
 - Regarding the papers that the University has released, disclose to the complainant the redacted personal data in the two RSSC Unreserved Agenda documents, and the redacted information in

the MSDB standing order paper, MSDB Information Technology Committee minutes paper, and the MSDB agenda paper.

- If it hasn't already done so, disclose the paper discussed at paragraph 10 of this notice, with any personal data appropriately redacted.
4. The University 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. The complainant made the following information request to the University on 8 July 2024:
- "Per rights conferred by the FOI 2000 Act, we want to ask for the following documentation, with the relevant search period spanning from the 9th of July 2023 to the 8th of July 2004 (1 calendar year):
- a) Minutes and associated papers of the Medical Sciences Divisional Board.
 - b) Minutes and associated papers of the Research Staff Steering Committee.
 - c) Minutes and associated papers of the Research and Innovation Committee, but only where the papers or points were sent by, or discussed with, or discussed under the suggestion of, the Research Staff Steering Committee. In simpler terms, this can be understood as those minute points and papers where the Research and Innovation Committee discusses topics that are related to the work of, or suggestions stemming from the Research Staff Steering Committee."
6. The University responded on 7 August 2024 and refused the request under section 14(1) of FOIA, which concerns vexatious requests.
7. The University also referred to section 12, which concerns the cost of compliance, and said that the cost of redacting exempt information would exceed the appropriate limit. Although it didn't rely on section 12, the Commissioner reminds the University here that section 12 can't

include the burden of redacting information, but this can be considered under section 14(1).

8. Following its internal review dated 29 October 2024, the University revised its position. It disclosed some relevant information and advised that the remaining information was exempt under sections 36(2)(b), 40(2) and 43(2) of FOIA.
9. From reviewing the withheld information, which the University has provided to him, the Commissioner notes that it has also applied section 31 of FOIA to a small amount of the information to which it has also applied section 36.
10. Finally, during the Commissioner's investigation, the University acknowledged that it had mistakenly applied section 43(2) to some of the information it's withholding. The University confirmed to the Commissioner that it would disclose this information, with personal data redacted.

Reasons for decision

11. In this first instance, this reasoning covers the University's application of sections 36(2)(b) and 40(2) of FOIA to information within scope of the complainant's request and, if necessary, its application of sections 31(1) and 43(2). Finally, the Commissioner will consider the timeliness of the University's response.

Section 36 – effective conduct of public affairs

12. The University has applied the exemptions under section 36(2)(b) to the majority of the information it's withholding; that is information associated with Medical Sciences Division Board (MSDB), Research Staff Steering Committee (RSSC) and Research and Innovation Committee (RIC) meetings.
13. Under section 36(2)(b) of FOIA information is exempt from disclosure if, in the reasonable opinion of a qualified person, its disclosure would or would be likely to inhibit either (i) the free and frank provision of advice or (ii) the free and frank exchange of views, or both.
14. The qualified person (QP) in this case was Professor Irene Tracey, the University's Vice-Chancellor. The Commissioner is satisfied that this individual was authorised as the QP under section 36(5) of FOIA.
15. The University has provided the Commissioner with a copy of its submission to the QP about the request. From that submission the

Commissioner accepts that the QP gave their opinion that the two exemptions were engaged. The QP submission indicates that the QP gave their opinion on 25 October 2024 which was before the University provided its internal review and therefore it was given at an appropriate time.

16. The QP was provided with the wording of the request, they were advised which section 36(2) exemptions were being considered and given the wording of the exemptions. The QP was advised why the inhibition envisioned under the two exemptions would be likely to occur and was provided with a sample of the information being withheld.
17. The QP accepted the advice that the University should withhold information on matters that the Committees in question were still considering. This was because it would be likely to prevent progress being made on these issues in an effective way, through people not feeling able to talk about the issues freely.
18. The QP's opinion confirms that they considered that disclosing the information "would be likely to" cause the inhibition envisioned by the two exemptions.
19. It's important to note that 'reasonableness' in relation to the QP's opinion isn't determined by whether the Commissioner agrees with the opinion provided but whether the opinion is in accordance with reason. In other words, is it an opinion that a reasonable person could hold? This only requires that it's a reasonable opinion, and not necessarily the most reasonable opinion.
20. The Commissioner considers that the QP had sufficient background knowledge and was provided with sufficient information to enable them to form an opinion on the matter.
21. The Commissioner considers it to be a reasonable opinion that disclosing information on matters that were still 'live' could inhibit people from freely providing advice and exchanging views on those matters.
22. The Commissioner finally accepts the view that the harm envisioned under these two exemptions would be likely to happen, that is, there's more than a hypothetical or remote possibility of the harm occurring.
23. The Commissioner is aware from their complaint to him that the complainant disputes that section 36(2)(b)(i) and section 36(2)(b)(ii) are engaged. However, on the basis of the material the University has provided, he will accept that they **are** engaged, and he's gone on to consider the public interest tests associated with these exemptions.

Public interest test

24. In their complaint to the Commissioner, the complainant presented the following arguments for the information's disclosure:

"... it is self evident that the public interest in the research activities and in the functioning of a division that receives dozens of millions of pounds of the taxpayers has an overwhelming factor of openness and transparency for the use of our money, and so the factors at play include but are not limited to:

a. Transparency and openness in the administration of a university that receives large subsidies from the taxpayer.

b. Scrutiny and accountability for the decisions the PA takes and how it functions.

c. Other actors could learn lessons to improve their own decision making, planning, and operational activities. This benefits all society as a whole.

d. Accountability of the senior management team.

e. Improved understanding of the decisions taken, the processes, as well as historical reasons for doing certain actions.

f. Informing the public debate about the crisis experienced by UK universities.

g. Enabling interested individuals, organisations, and the public at large to understand, influence, or challenge decisions that affect them directly.

h. Where applicable, exposure of misconduct or incompetence.

i. Increasing public confidence in one of the most powerful universities in the planet

j. Upholding high standard of the senior management team and their delegates

k. Reassurance that those being paid with public funds are conducting their activities as they should"

25. The University has acknowledged that there's a public interest in disclosing the information because, generally, there's an interest in the University conducting its affairs openly and transparently.

26. Against disclosure, in its internal review response the University said that the interest in transparency was outweighed by the public interest in the University maintaining an effective decision-making process. It said that certain matters need a private thinking space where the University can access free and frank advice and engage in the free and frank exchange of views. A less effective decision-making process, it said, would increase the risk that the University would take less well-informed and less well-founded decisions.
27. In its submission to the Commissioner, the University noted the subject matters of the papers being withheld including pay and conditions, risk management and building projects. It considers it likely that the matters in question would be of interest more broadly, both within and outside the University. However, the University's view is that it's imperative that decision makers, and those advising the decision makers are able to discuss those matters freely and without the fear of being subjected to premature public scrutiny.

Balance of the public interest

28. The Commissioner has found that disclosing the information being withheld under sections 36(2)(b)(i) and 36(2)(b)(ii) would be likely to inhibit the provision of advice and exchange of views.
29. When he considers the balance of the public interest, the Commissioner takes account of the weight of the QP's opinion, the timing of the request, and the severity and extent of the envisioned inhibition and prejudice.
30. First, in respect of both exemptions, the Commissioner considers that, as Vice-Chancellor, the University's QP had the requisite knowledge of how their organisation works and the consequences of any disclosure. The Commissioner has therefore given their opinion a measure of respect.
31. Regarding timing, the public interest in being able to provide advice and exchange views about issues freely and frankly will be greater if the issues are ongoing and live at the time of a request. The University has advised that the matters that the withheld information concerns were still live at the point of the complainant's request.
32. The inhibition envisioned under section 36(2)(b) is focussed on individuals' willingness to continue to share advice and views about certain matters of importance to the University and that were still being considered at the time of the request. The Commissioner has found that the opinion that individuals would be less likely to share advice and

views openly if the information were to be disclosed at the time of the current request is a reasonable opinion.

33. The Commissioner acknowledges that the withheld information has some wider public interest. Balancing the value of the withheld information against the consequences of disclosure, the Commissioner still considers that, at the time of the request, there was greater public interest in protecting the 'safe space' that people need to conduct their affairs. The individuals in this case shouldn't feel deterred from continuing to consider important matters freely and frankly in order to make the best decisions about them. Furthermore, the general public interest in transparency has been sufficiently met though the information the University has disclosed. The Commissioner is therefore satisfied that, at the time of the request, there was greater public interest in withholding the information to which the University had applied section 36(2)(b) of FOIA.
34. The Commissioner has therefore decided that the University correctly applied the exemptions under section 36(2)(b) of FOIA to the information it's withholding under these exemptions, and that the public interest favoured maintaining these exemptions.
35. Because he's found this information engages section 36(2), the Commissioner doesn't consider it's necessary to consider the University's application of sections 40(2) and 43(2) to the same information. Nor is it necessary to consider its application of section 31 to a small amount of the same information.

Section 40(2) – personal data

36. As noted, the University has applied section 40(2) to some of the information to which it also applied section 36 (and section 43). Since the Commissioner has found that information to be exempt under section 36, it's not necessary to consider the University's application of section 40(2) to that same information.
37. However, the University disclosed some papers having redacted some of the information from these under section 40(2) only. This is information in two RSSC 'Unreserved Agenda' documents (at pages 67 and 106 of the withheld information the University provided to the Commissioner) and three MSDB documents: a standing orders paper (at page 55), the minutes of an Information Technology Committee meeting (page 176) and the agenda of a MSDB meeting (page 290). The Commissioner will therefore consider the University's application of section 40(2) to that information.

38. Under section 40(2), information is exempt from disclosure if it's the personal data of an individual other than the applicant and disclosure would contravene any of the principles relating to the processing of personal data that are set out in Article 5 of the UK General Data Protection Regulation (UK GDPR).
39. The most relevant principle is Article 5(1)(a). This states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
40. The Commissioner has first considered whether the information the University is withholding under section 40(2) can be categorised as personal data. As noted, the University has provided him with the information it's withholding.
41. Personal data is defined as information that relates to a living individual and from which the individual can be identified.
42. The information being withheld in the RSSC agenda documents is a name and role, and the initials of certain individuals. In the MSDB documents, the withheld information is the names of members of a Board, names and initials, and information about a Professor. In the context of the documents in question, this information can clearly be categorised as the personal data of those individuals – the data subjects – as it relates to them, and they could be identified from it.
43. The Commissioner has gone on to consider whether disclosing that data would breach Article 5(1)(a) which, as above, states that personal data must be processed lawfully.
44. Personal data is processed when it's disclosed in response to a FOIA request. In order to be lawful under Article 5(1)(a), the lawful basis under Article 6(1)(f) of the UK GDPR must apply to the processing. It must also be generally lawful.
45. Article 6(1)(f) states:

"...processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, ..."
46. In order to determine whether disclosing the personal data would be lawful the Commissioner considers three 'tests': the legitimate interest test, the necessity test, and the balancing test where the applicant's

legitimate interests are balanced against the data subjects' interests or fundamental rights and freedoms.

47. The complainant has an interest in the University's decision making and that's a legitimate interest for them to have. There's also a wider interest in the University's decision making being transparent.
48. In order to address those specific interests, it would be necessary for the University to disclose the information being considered – disclosure would show who was involved in the University's decision making. The Commissioner has therefore gone on to carry out the final, balancing, test.
49. In considering this balancing test, the Commissioner takes into account any or all of the following: the potential harm or distress that disclosure may cause; whether the information is already in the public domain; whether the information is already known to some individuals; whether the data subjects expressed concern about the disclosure; and the reasonable expectations of the data subjects.
50. A key issue is whether the data subjects concerned have a reasonable expectation that their information won't be disclosed. These expectations can be shaped by factors such as the individuals' general expectation of privacy, whether the information relates to employees in their professional role or to them as individuals, and the purpose for which they provided their personal data.
51. It's also important to consider whether disclosure would be likely to result in unwarranted damage or distress to those individuals.
52. In their complaint to the Commissioner, the complainant has argued that the Committees in question are mostly populated with very senior figures, professors, the senior management team, senior or middle administrators. They consider that it's an,

"absolutely well established fact that these kinds of groups, who are responsible for the administration and actions of one of the most important Universities in the United Kingdom, and who operate and use public funds, would not have an expectation of privacy in the context of their official duties."
53. The complainant also notes that the identities of members of the RSSC (and RIC) are in the public domain, and they have provided the Commissioner with examples of links to this published information.
54. In its submission to the Commissioner, and in relation to the information being considered here, the University said that the information records committee members' attendance at committee meetings. It considers

that this information shouldn't be disclosed, in line with guidance issued by the Commissioner. The University says that this is a proportionate way of respecting these individuals' reasonable expectations about the way that the University processes their personal data.

55. The Commissioner has reviewed the information in the disclosed RSSC agendas to which the University has applied section 40(2); the initials of members of that Committee, and the name, role and initials of a member of a Hub.
56. The Commissioner has searched for the names of the members of the RSCC, and the Hub in question and has found them in the public domain. In those circumstances, and given their relative seniority, the Commissioner isn't persuaded that these individuals wouldn't expect that personal data in the Agenda documents wouldn't be disclosed in response to this request.
57. The Commissioner has gone on to consider the information redacted from the MSDB material. Regarding the standing orders paper, the information is the membership of the Board at that point. The majority of the Board members are at a senior level – including one name that appears to be crossed out. The membership of the MSDB is also published on the University's website. As such, the Commissioner considers that these individuals would have a reasonable expectation that their personal data – ie their membership of a Board at a point in time - would be disclosed.
58. Two of the members' names – which also appear crossed out – are student members. The Commissioner notes that the names of student members of the Board are also published on its website. As such, he considers that members at that level would also reasonably expect that their personal data – their association with the Board at a particular point - would be disclosed in response to a FOIA request.
59. In the Information Technology (IT) paper, the redacted information is the names and initials of IT Committee members and other individuals, including from outside the University.
60. The names of the IT Committee members are already in the public domain. Other redacted names are those of relatively senior staff members, such as Professors, and individuals whose roles link with the broad subject of IT, including the external individuals.
61. In addition, in this IT paper, the data subjects are simply discussing IT matters at the University, and as such, the Commissioner doesn't consider the information to be sensitive.

62. Finally, the Commissioner has considered the personal data withheld from the MSDB agenda document. This is information about a named individual - at a senior level - who is a member of the MSDB and who had been given a particular role.
63. The University's section 40(2) submission is scant, and its principal argument is that disclosing [all] the personal data would disclose people's attendance at meetings.
64. As noted, the Commissioner considers that people at a senior level would have the reasonable expectation that their attendance at internal meetings would be disclosed, particularly in this case since the membership of the MSDB is also in the public domain.
65. Having dealt with that argument and dismissed it, the Commissioner can see no reason why the data subjects in question would have the reasonable expectation that the information in the MSDB agenda - over and above their attendance at the meetings - wouldn't also be disclosed.
66. In respect of the two RSSC agendas and the MSDB papers, based on the above factors, the Commissioner has determined that there's sufficient legitimate interest to outweigh those data subjects' interests. The Commissioner therefore considers that there's an Article 6 basis for processing and so disclosing the information would be lawful.
67. Even though it has been demonstrated that disclosure of the requested information under FOIA would be lawful, it's still necessary to show that disclosure would be fair and transparent under principle (a).
68. In relation to fairness, the Commissioner considers that if the disclosure passes the legitimate interest test for lawful processing, it's highly likely that disclosure will be fair for the same reasons.
69. The requirement for transparency is met because as a public authority, the University is subject to FOIA.
70. In this instance, the Commissioner has decided that the University has failed to demonstrate that the exemption at section 40(2) is engaged in respect of the information redacted from the two disclosed RSSC Unreserved Agenda papers, the MSDB standing order paper, the MSDB IT Committee minutes and the MSDB agenda paper.

Procedural matters

71. Section 1(1) of FOIA obliges a public authority (a) to confirm whether it holds information an applicant has requested and (b) to communicate the information if it's held and isn't exempt information.
72. Under section 10(1), the authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
73. The University didn't communicate any information until the point of its internal review and has now acknowledged that it has mistakenly withheld some information within scope of the request. As such, it didn't comply with sections 1(1) and 10(1) of FOIA.

Right of appeal

74. 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

75. 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.
76. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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