

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 September 2015

**Public Authority:** London School of Economics and Political Science

**Address:** Houghton Street  
London  
WC2A 2AE

### Decision (including any steps ordered)

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1. The complainant has requested from the London School of Economics and Political Science (the LSE) various information including contracts relating to a named employee. The LSE has stated that it does not hold the requested information.
2. The Commissioner's decision is that the LSE does not hold any information falling within the scope of the request based on a balance of probabilities test.

### Request and response

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3. On 5 (twice), 6 (twice) and 7 February 2014 respectively the complainant wrote to the LSE and requested information in the following terms:
  1. *'in his letter of 27 July 2011 (name redacted) of the London School of Economics-Enterprise abruptly terminated my contract as Senior Researcher on the Single Market Study. In his letter, (name redacted) charged non-performance on my part and wrote that he had gotten permission from the 'School' to do so. For over two years I have tried to learn the terms of the alleged non-performance, given that (name redacted) does not have the professional qualifications to assess research performance and terminate a research contract. During this time, (name redacted) has never responded with the due information.*

*Now, under the FofIAct, I am requesting that you send me all the correspondence by the School administrator(s) or professor(s) who allegedly assessed my work and gave (name redacted) the permission to terminate my contract.'*

- 2. 'my university, UIC, is still owed two payments for work that I did in the summers of 2009 and 2010 on LSE projects directed by (name redacted) and managed by his Esoc-Lab ERA account; this is in spite of the fact that the clients of the projects have fully paid the LSE for them and that work on the projects has been published and, in one case, even received an award by the client.*

*Over the years, (name redacted), the UIC administration, and myself have repeatedly asked for the payments but have not received any response. What I have now learned is that I have been accused by someone at the School of not having worked on those projects.*

*Under the FofIAct I am requesting that you provide me with all the correspondence in which my name appears and that relates to the blind and outrageous accusation of non-work on my part in the summers of 2009 and 2010'.*

- 3. 'in his letter of 27 July 2011 (name redacted) of the London School of Economics-Enterprise abruptly communicated to (name redacted) the termination of his contract as Principal Investigator on the Single Market Study. (name redacted) wrote that he had received the permission to do so by the 'School'. This is because (name redacted) is not professionally qualified to evaluate research work and terminate research project contracts.*

*Since then, (name redacted) has attempted to receive from (name redacted) the details of the termination of his contract, but (name redacted) has not complied with (name redacted) repeated requests.*

*Under the FofIAct, and acting legitimately on behalf of (name redacted), I am now requesting that you send me the correspondence in which the School administrator(s) or Professor(s) gave (name redacted) the permission to terminate (name redacted) contract.'*

- 4. 'during the year 2008, when (name redacted) was a LSE faculty member teaching full time in the European Institute, he signed*

*contracts for a number of assistants and researchers working on the last Esoc-Lab projects he had brought to the LSE Research Office. However, in the fall of 2011—which was a year after his retirement (effective 1 October 2010)— (name redacted) received information that other contracts, expenditure invoices, and promotion papers had been paid for bearing his forged signature; relatedly, he learned that the payments for these forged documents had been made by the Research Office drawing from the funds of (name redacted) projects (ERA account).*

*Since then, (name redacted) has made every possible effort to receive the details of these and other transactions which depleted the ERA. The School has refused to give (name redacted) such data; instead, accusing (name redacted) of having created a deficit in the ERA.*

*Under the FofIAAct, and legitimately acting on behalf of (name redacted), I hereby request that the School provide me with all correspondence, contracts, promotions and documents containing (name redacted) name and his signature or presumed signature from June to December 2008 in regard to: (names redacted).*

*In particular, the partial data in my possession indicate that (name redacted) received a promotion in November 2008 while working on (name redacted) projects; promotion which placed her in the rank of a high level LSE administrator and drawing a corresponding large salary from the Esoc-Lab's ERA funds. (name redacted) did not prepare/submit such promotion papers for (name redacted); and neither did (name redacted), at the time the Director of the European Institute. (name redacted) is entitled to receiving this information in order to defend himself from the unjust accusations.'*

- 5. 'in 2012 (name redacted) learned that (name redacted) during the period 2001-2007 when she had been one of several research assistants or project managers on (name redacted) Esoc-Lab projects as well as one of his Ph.d students, showed to have been a 'Research Fellow' in Esoc-Lab. During that period of time, (name redacted) had only signed hourly contracts for (name redacted) at the mandated LSE rate for assistants or managers. (name redacted) also learned that (name redacted) listed as her own a dozen of his Esoc-Lab projects on some of which other students and not her had contributed work as*

*assistants. (name redacted) has made repeated effort to clarify this matter with the School but to no avail.*

*In light of the depletion of the ERA account of which (name redacted) was accused in the fall of 2011, I am hereby requesting that you provide me with copies of (name redacted) contracts signed by (name redacted) for the period 2001-2007 so that he can defend himself by verifying that eventual Research Fellow contracts and related higher salary payments for (name redacted) were never signed by him.'*

4. The LSE responded on 14 March 2014 to all five of the above requests. In relation to requests 1 and 3 above, the LSE stated that it did not hold any recorded information as the only advice (name redacted) received in relation to the contract terminations was verbal. In relation to request 2, the LSE disclosed all the correspondence it held in relation to the UIC (University of Illinois and Chicago) contract. In relation to requests 4 and 5 the LSE stated that the only information it held in a recorded format was one document relating to (name redacted) which it withheld under section 40(2) of the FOIA<sup>1</sup>.
5. On 21 March 2014 the complainant requested an internal review.
6. On 30 April 2014 the LSE wrote to the complainant with the outcome of its internal review. It upheld its application of section 40(2) of the FOIA in respect of (name redacted) promotion document. It added that while it held staff files for (name redacted) and (name redacted) it considered that these were also exempt from disclosure under section 40(2) of the FOIA. Contrary to what it had said earlier the LSE, confirmed that it did hold certain information regarding invoices, the ERA deficit and due payments but added that this would be exempt under section 31(1)(a) of the FOIA.

### **Complaint submitted to the Information Commissioner's Office**

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7. The complainant contacted the Commissioner in or about June 2014 to complain about the way her various requests for information had been handled.
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<sup>1</sup> The LSE has since confirmed to the Commissioner that this was a mistake as it does not hold any information relating to the individual identified in request 5.

## Chronology

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8. On 2 October 2014 the Commissioner contacted the LSE and requested details of the searches and enquiries it carried out to identify, locate and extract all information falling within the scope of the complainant's requests together copies of any recorded information held.
9. The LSE responded on 30 October 2014. It disclosed copies of the information it held including that relating to two of the three individuals identified in request 4. However, it said in relation to the other individual identified in request 4 and solely in request 5, the information was still missing. The LSE did not explain what searches and enquiries it carried out.
10. The Commissioner contacted the LSE again in December 2014 for clarification as to what information it actually held with specific reference to each of the five requests and which exemption(s) if any it wished to apply.
11. The LSE responded in January and May 2015 with some further information but failed to respond to the specific question in relation to the searches and enquiries it carried out to identify, locate and extract information falling within the scope of the complainant's requests.
12. On 17 April 2015 the Commissioner contacted the complainant again. He said the LSE had reiterated that it did not hold any further information in relation to requests 1, 2 and 3 apart from that already disclosed. He therefore suggested that if she wanted further and more detailed information about the issues raised in these requests she might want to submit a subject access request under the Data Protection Act 1998 (the DPA). The Commissioner also said that the LSE was maintaining its position under section 40(2) of the FOIA in relation to the information held for two of the three individuals named in request 4.
13. The complainant responded on 27 April 2015 and said she was prepared to withdraw requests 1, 2 and 3 from her current complaint. With regard to the specific information withheld in relation to the two individuals identified in request 4 the complaint indicated that she had already obtained access to this.
14. The Commissioner contacted the LSE again on 21 May and explained that the complainant had withdrawn requests 1, 2 and 3 from her complaint and wanted to proceed on the basis of requests 4 and 5, specifically in relation to the missing information for one of the three named individuals. The Commissioner reiterated his request for details

of the searches and enquiries it carried out to identify, locate and extract information this information.

15. The LSE responded to the Commissioner on 22 May and 8 June 2015 with details of the searches and enquiries it carried out none of which were successful in locating the information in relation to one of the three named individuals in requests 4 and 5.

### **Scope of the case**

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16. The complainant confirmed in an email to the Commissioner dated 27 August 2015 that she was happy for the scope of her complaint to be restricted to the LSE's response to requests 4 and 5 in relation to one particular individual (name redacted).

### **Reasons for decision**

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#### **Section 1 of the FOIA – Recorded information held**

17. *Section 1 of FOIA states that:*

- (1) *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.*

18. In this case the LSE has stated that it no longer holds the information falling within the scope of requests 4 and 5 in respect of one particular individual (name redacted). This information (comprising of various contracts and associated documents) was contained in the individual's Human Resources (HR) file which the LSE said was missing. It did however confirm that the HR file was held but was lost or mislaid before the complainant submitted her requests in February 2014.
19. In scenarios where there is a dispute as to whether a public authority holds any recorded information falling within the scope of a request the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
20. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority

holds any recorded information falling within the scope of a request (or was held at the time of such a request).

21. When assessing whether a public authority holds any information based on a balance of probabilities test the Commissioner will look at the adequacy of its searches and enquiries and any evidence to doubt the veracity of its statements.
22. The Commissioner contacted the LSE on a number of occasions in 2014 and 2015 to enquire about its searches and enquiries.
23. In relation to the specific searches and enquiries carried out the LSE's Records Manager made the following comments in her emails dated 22 May and 8 June 2015. She said that the personnel files of the staff members involved in the investigation (including those of the individual identified in requests 4 and 5) were put into two boxes, which were currently sitting by her desk. She said that she had been through both boxes thoroughly but the personnel file for the individual named in the request was not in there. She added that the LSE's personnel files were currently in paper format, with the relevant documentation (for example, letters of appointment, signed contracts, changes to contracts and so on) printed out if created digitally. As part of the LSE's investigation late last year, the LSE's Records Manager said that she had contacted HR who could not locate the contracts. The LSE's European Institute (EI) directed her to HR in the first place as the contracts are kept in HR, not with the departments. She was advised that LSE Enterprise did not have the file either.
24. The complainant expressed her surprise that the individual's HR file was missing as she had ascertained the person concerned had been rehired by the LSE, LSE Enterprise or the European Institute. She therefore suggested that before the LSE's HR department could reemploy someone they would have to have access to their complete HR file.
25. The complainant also pointed out that when the external organisation appointed by the LSE to carry out an investigation in relation to various matters associated with the requested information in 2012 it was given access to various HR files including the one for the individual cited in her information request.
26. The LSE confirmed that it had reemployed the individual concerned within its EI in September 2014. However, as the original file has been lost, HR started a new one. The LSE confirmed that this file did not contain any of the earlier contracts.
27. Having considered the LSE's responses to the Commissioner's investigations, he is satisfied that, on the balance of probabilities, the

LSE does not and did not hold at the time of the request, any information falling within its scope. He does however accept that the LSE did hold the HR file of the individual identified in requests 4 and 5 in 2012 when the external organisation was given access to it as part of its investigation.

28. The Commissioner understands the reasons why the complainant considers that the individuals' HR file should still be held. However, he has not received any evidence to doubt the veracity of the LSE's statements.

### **Other matters**

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29. The Commissioner has concerns regarding the LSE records management. Its published policy on 'Records Management'<sup>2</sup> outlines its various responsibilities. These include the requirement for confidential records to be stored in a safe and secure environment and only to be accessed by those who have a need or right to do so.
30. The LSE acknowledged that in the past its HR department had experienced a number of issues regarding its document management. However, it added that there were currently projects in place to bring about improvements to the situation.
31. The Commissioner recommends that the LSE continues to take the necessary steps to improve its records management, especially in relation to HR records of individual employees.

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<sup>2</sup> <http://www.lse.ac.uk/intranet/LSEServices/policies/pdfs/school/recManPol.pdf>



## Right of appeal

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32. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. 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 .....**

**Rachael Cragg**

**Group Manager**

**Information Commissioner's Office**

**Wycliffe House**

**Water Lane**

**Wilmslow**

**Cheshire**

**SK9 5AF**