

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 January 2017

Public Authority: University College London
Address: Gower Street
London
WC1E 6BT

Decision (including any steps ordered)

1. The complainant has requested information from University College, London (UCL) in relation to the resignation of Professor Sir Tim Hunt. UCL refused to disclose that information (the requested information) citing sections 36(2)(b)(ii), 36(2)(c) and 40(2) by virtue of 40(3)(a)(i) of the FOIA.
2. The Commissioner has concluded that section 40(2) of the FOIA is engaged in relation to the entirety of the requested information.
3. Therefore the Commissioner requires no steps to be taken.

Request and response

4. On 13 January 2016,, the complainant wrote to UCL and requested the following information: -

“Emails between Professor Geraint Rees of UCL and Sir Tim Hunt between June 8th 2015 and June 15th, 2015.”

5. UCL responded on 9 February 2016, citing sections 36(2) and 40(2) of the FOIA as a basis for non-disclosure of the requested information.
6. Following an internal review UCL wrote to the complainant on 16 March 2016. It stated that the reviewer was upholding the original decision not to disclose the requested information.

Scope of the case

8. The complainant contacted the Commissioner on 30 March to complain about the way his request for information had been handled.
9. The Commissioner has considered the way in which UCL has handled the complainant's request. The requested information consists of two e-mails, one to which UCL has applied sections 36(2)(b)(ii) and 36(2)(c) of the FOIA and the other to which UCL has applied section 40(2) of the FOIA. As the Commissioner considers that the entirety of the requested information relates to Professor Sir Tim Hunt, she has considered both parts of the requested information under section 40(2) of the FOIA.

Reasons for decision

Section 40(2) – personal data

10. UCL has stated that the second part of the requested information is exempt from disclosure under section 40(2) of the FOIA by virtue of section 40(3)(a)(i). However, the Commissioner has considered the application of that exemption in respect of the entirety of the requested information. The reason for this is that both parts of the requested information relate to Professor Sir Tim Hunt.

11. Section 40(2) provides that:

Any information to which a request for information relates is also exempt information if–

- (a) it constitutes personal data which do not fall within subsection (1), and*
- (b) either the first or the second condition below is satisfied.*

12. Section 40(3) provides that:

The first condition is–

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene–

- (i) any of the data protection principles

Is the requested information personal data?

13. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") as:

...data which relate to a living individual who can be identified–

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual...

14. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA.

15. The withheld information all relates to Professor Sir Tim Hunt, who can be identified from it. The Commissioner is satisfied that it is information directly about him, and therefore is his personal data.

Would disclosure breach any of the data protection principles?

16. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
17. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the individual

18. When considering whether a disclosure of personal information is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
19. The Commissioner recognises that the requested information contains comments made by both Professor Geraint Rees and Professor Sir Tim Hunt regarding the resignation of the latter, which he would not reasonably expect to be disclosed into the public domain. UCL informed the Commissioner that it felt that such disclosure would be unfair to him as he would not have expected personal information about his resignation to be disclosed. Whilst an eminent academic, he was an honorary member of staff at UCL and not a senior one, so UCL concluded that such an expectation would have been reasonable.

Potential consequences of disclosure

20. The Commissioner accepts that disclosure of the requested information may cause distress to Professor Sir Tim Hunt, particularly as it is some time since his resignation occurred, the media furore has subsided, and he and his family have begun a new chapter in their lives. Disclosure of the information at this stage would be likely to generate further media and public interest, which would be likely to cause some distress to him and his family.

Balancing the rights and freedoms of the data subject with the legitimate interest in disclosure

21. Disclosure of personal data is unlikely to be fair if it would have unjustified adverse effects on the individual concerned. In this case, the Commissioner has considered the likely adverse effects of disclosure on Professor Sir Tim Hunt and his family, balanced against any legitimate interest in disclosure.
22. In balancing the rights and freedoms of Professor Sir Tim Hunt, the data subject, against the legitimate interests pursued by the complainant in this case, the Commissioner has considered all the circumstances of the case. She has taken into account the complainant's argument, which is that there is still an overwhelming public interest in Professor Sir Tim Hunt's resignation and the circumstances surrounding this.
23. The complainant argues that there is still a great deal of confusion surrounding whether the resignation was carried out willingly or whether UCL forced this in some way. Given such confusion and the arguments and discussions which ensued amongst members of the public, the complainant considers that openness and transparency with regard to the requested information would clear up such confusion and enlighten the public as to the true facts.
24. UCL argues that, whilst there was widespread media and public interest at the time of the resignation, this does not amount to an ongoing legitimate interest in the contents of information regarding a resignation. It argues that any lingering legitimate interest which would be served would be outweighed by the detriment that disclosure of the information would cause to Professor Sir Tim Hunt and his family.
25. The Commissioner has considered all arguments whilst carrying out her balancing exercise and has read a considerable amount of information, which is in the public domain, regarding the resignation. She has noted that there are conflicting stories and accounts of the circumstances of the resignation and that these have not been clarified.
26. Whilst she accepts that disclosure of the requested information would be likely to cause distress to Professor Sir Tim Hunt and his family, she has also taken into account the complainant's arguments that disclosure would serve to help the public find out the truth about what happened. The Commissioner considers that there may well be a strong legitimate interest in finding out the facts behind the conflicting stories regarding the resignation, which may inform public debate to a certain extent about the issue of the resignation and may contribute to discussions of

the wider significant issue of attitudes towards women in science. However, when she considered the information itself, she concluded that the information on its own, or together with other publicly available information, would not conclusively clarify exactly what happened, nor would it in her opinion inform in any significant way the wider issue of attitudes towards women in science. Any legitimate interest in disclosure of the information would be outweighed by the detriment to Professor Sir Tim Hunt and his family, i.e. the potential distress caused to them by disclosure at this stage.

27. The Commissioner therefore considers that the legitimate interest in disclosure in this case does not outweigh the rights and freedoms of the data subject and that therefore UCL has correctly applied section 40(2) of the FOIA by virtue of section 40(3)(a)(i) of the FOIA to the second part of the requested information. She also considers that section 40(2) is engaged in relation to the first part of the requested information, therefore she has not gone on to consider UCL's application of the exemptions under sections 36(2)(b)(ii) or 36(2)(c) of the FOIA.

Right of appeal

28. 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

29. 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.
30. 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

Deirdre Collins
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