

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 October 2022

Public Authority: The Council of the University of Cambridge
Address: The Old Schools
Trinity Lane
Cambridge
CB2 1TN

Decision (including any steps ordered)

1. The complainant has requested information relating to an application for a research grant for the Spectrum 10k project. The Council of the University of Cambridge ("the University") provided a redacted version of the information, but relied on section 22A (research) and section 40(2) of FOIA (third party personal data) to withhold some information.
2. The Commissioner's decision is that section 22A of FOIA is engaged, but that the balance of the public interest favours disclosure. A small amount of the withheld information is exempt under section 40(2) of FOIA.
3. The Commissioner requires the University to take the following steps to ensure compliance with the legislation.
 - Disclose, to the complainant, copies of all the information it has withheld. The University may react individual contact details.
4. The University 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 18 October 2021 the complainant requested information of the following description:

“The grant award letter for the 'Collaborative Award, 'Common Variant Genetics of Autism and Autistic Traits (GWAS) Consortium' project you sent in <https://www.whatdotheyknow.com/request/f...> mentions that it is based on the application made by the University of Cambridge to the Wellcome Trust. Please send all the documents held by Cambridge University which are held in relation to this application, including, but not limited, to all the documents sent by Cambridge University to the Wellcome Trust for this award.”
6. On 11 November 2021, the University refused the request as the cost of compliance would exceed the appropriate limit. It explained that it would be able to provide a copy of the application, but that “there are several hundred, if not thousand [sic], documents within scope, many of which (e.g. drafts or emails held by various members of the project team) are not indexed or filed formally.”
7. On 12 November 2021, the complainant contacted the University again to refine their request:

“consider this as a request for all the documents held by Cambridge University in relation to the application for the 'Collaborative Award, 'Common Variant Genetics of Autism and Autistic Traits (GWAS) Consortium' project, including, but not limited, to all the documents sent by Cambridge University to the Wellcome Trust for this award, that are either indexed or filed formally.”
8. On 10 December 2021, the University responded. It provided the complainant with a copy of the application letter, but redacted some of the information, relying on section 22A and 40(2) of FOIA in order to do so.
9. The complainant requested an internal review on 11 December 2021. The University sent the outcome of its internal review on 13 January 2022. It upheld its original position with regard to redactions – although it had identified two additional documents that it provided to the complainant.

Scope of the case

10. The complainant contacted the Commissioner on 14 January 2022 to complain about the way their request for information had been handled.
11. The University indicated in its submission that it was relying on both the cited exemptions to make each redaction and for broadly the same reasoning. Given that some of the information does not relate to any individual (identifiable or otherwise), the Commissioner is unclear how such information could possibly fall within the scope of section 40(2). He has therefore considered section 22A of FOIA first. If and to the extent that that exemption does not apply, he will consider whether section 40(2) of FOIA applies to any of the residual information.

Reasons for decision

12. Section 22A of FOIA states that:

“(1) Information obtained in the course of, or derived from, a programme of research is exempt information if—

- (a) the programme is continuing with a view to the publication, by a public authority or any other person, of a report of the research (whether or not including a statement of that information), and
- (b) disclosure of the information under this Act before the date of publication would, or would be likely to, prejudice—
 - (i) the programme,
 - (ii) the interests of any individual participating in the programme,
 - (iii) the interests of the authority which holds the information, or
 - (iv) the interests of the authority mentioned in paragraph (a) (if it is a different authority from that which holds the information).

13. Section 22A is not a commonly-cited exemption, but it works in the same way as any other prejudice-based exemption. First the public authority must identify an applicable interest relevant to the exemption. Second, the public authority must explain why and how that interest

could be harmed by disclosure. Finally, the public authority must decide on the likelihood of the harm occurring.

14. Section 22A will apply in situations where a programme of research is ongoing and where premature disclosure of information relating to that programme is likely to impede the programme or impede the programme's ability to take credit for or exploit its work – including commercial exploitation.
15. The exemption may apply in situations where a person has sought raw data held by the programme or sensitive details of the precise methodology being used (or being proposed to be used) where disclosure would allow others to exploit the benefit of the programme's work for free. The exemption might also apply in situations where disclosure might prevent an individual from participating in such a programme.
16. The information the University has identified as falling within the scope of the request is a copy of the project application made to the Wellcome Trust, a pre-application form made to the same organisation (and containing the same information as the full application), letters of support from various academic or charitable institutions and an exchange of emails regarding the precise award of the grant.
17. The University explained to the Commissioner that the information in question related to a programme of research on autism known as the Spectrum 10k project. It confirmed that, whilst the project represented a major collaborative research initiative, the project's leaders had, in establishing the project, confirmed that a number of academic publications were envisaged and that they intended to publish the project's research.
18. The Commissioner is satisfied that the University has identified an applicable interest relevant to this exemption.
19. The University stated that its own interests would be prejudiced by disclosure as well as the interests of the various individuals who had provided statements of support. The University explained that these individuals' interests would be prejudiced by disclosure because:

“Following the launch of Spectrum 10K, the project encountered a substantial public backlash. This included commentary on Twitter and other social media platforms , the formation of a public petition called “Stop Spectrum 10K” and the formation of a group called “Boycott Spectrum 10K” . A protest against the Spectrum 10K study was also held outside Douglas House where the study team's offices are based. Arguments put forward as part of the backlash included concerns that

the project was associated with eugenics and that genetic research would lead to the eradication of autistic people. This has included concerns that some principal investigators within the Spectrum 10K study have been involved in organisations associated with seeking a cure for autism. The study has repeatedly and explicitly stated that it is anti-eugenics, does not seek a cure for autism and continues to call for the inclusion, acceptance and dignity of autistic people. Given the volume of negative attention and misinformation, the disclosure of the names of both individual and organisational partners (including partners in the form of pre-existing scientific datasets and databases) providing support to the project may subject those collaborators to unfair scrutiny and negative attention, jeopardising scientific collaboration and the aims/integrity of the Spectrum 10K project both now and in the future.”

20. The University claimed the lower bar of prejudice, meaning that the chance of harm is under 50% but remains more than a remote or hypothetical possibility.

The Commissioner's view

21. The Commissioner recognises that Spectrum 10K is a project that has rightly or wrongly, attracted controversy. He accepts that there will be those who feel strongly that particular individuals should or should not be contributing to such a project.
22. However, the Commissioner is not persuaded that the University has made a particularly persuasive case that prejudice would be likely to result from disclosure.
23. Firstly, the Commissioner notes that much of what the University has redacted relates to previous research projects that the various project collaborators have worked on as well as papers they have published. He considers that the majority of this information is already in the public domain – particularly the published papers.
24. The Commissioner notes that many of the grant awards have already been made public – although not always the quantum of the grant. However the University has not put forward any arguments to explain why, when an individual is known to have received a research grant, the precise quantum of that grant would be likely to prejudice their involvement in Spectrum 10k or the project's aims.
25. The Commissioner has not been provided with evidence to suggest that any of the individuals or organisations named in the withheld information has indicated that their interests would be harmed by

disclosure or that they would be less inclined to participate in the project if their involvement was disclosed.

26. The University has noted that some of the withheld information relates to existing sources of data on which Spectrum 10k wishes to draw. The Commissioner does accept that, were this information to be made public, there is a possibility that those whose data is contained within those databases may seek to prevent their data from being accessed by Spectrum 10k or seek to have their own data removed from such databases entirely. The Commissioner accepts that this is more than just a hypothetical possibility (given the strength of feeling in some quarters about the Spectrum 10k project) and one which might potentially hinder the project's work.
27. He has therefore, by a narrow margin, been persuaded that the exemption is engaged.

Public interest test

28. Even where information could harm ongoing research projects, it must still be disclosed unless it can be demonstrated that the balance of the public interest favours maintaining the exemption.
29. As the Commissioner has accepted that the lower bar of prejudice is engaged, there will always be some inherent public interest in preventing that harm from arising. However, given that he was only just satisfied that the exemption was engaged, it follows that the public interest in maintaining that exemption will be weak.
30. Having considered the matter, the Commissioner is convinced that the balance of the public interest lies strongly in favour of disclosure.
31. Spectrum 10k is an ambitious project, but not one without controversy. In particular, as the University's submission indicates, questions have been raised about the suitability of some of the collaborators, based on their previous research projects.
32. Whilst the Commissioner recognises that this might be uncomfortable, he considers that such arguments are actually arguments in favour of increasing transparency. If the University attempts to cloak the collaborators' previous work in a shroud of secrecy, it is only likely to fuel suspicions that there is something to hide. It also assists those with a malign agenda to paint a partial and misleading picture of each collaborator's previous work. Much of this information is already in the public domain anyway for those sufficiently motivated to search for it, so the Commissioner sees little value in the University attempting to prevent disclosure.

33. The University argued that the public interest should favour withholding the information in order to protect:

“the fundamental ability of the scientific community to establish and explore collaborations at an early stage of project development – collaborations that often are crucial to the successful running of scientific studies – without public scrutiny that could lead to these collaborations being challenged or withdrawn as a result of adverse commentary and activity.”

34. Where institutions have pledged their support to Spectrum 10k, there is a public interest in understanding which institutions they are so that those institutions can have their individual roles scrutinised appropriately.
35. “Adverse commentary and activity” is not a valid reason for withholding information even if this does “challenge” collaboration. Public authorities should be sufficiently robust and able to withstand a certain level of scrutiny and criticism. The Commissioner also notes that Spectrum 10k has already paused its work to rethink parts of its approach – apparently because of adverse commentary. Valid criticism can be a positive force if it leads to beneficial changes.
36. The Commissioner recognises that it is possible that disclosure may open up lines of legitimate journalistic enquiry. However, once again, he considers that a spirit of openness is, in the long term, more likely to help than hinder the outcomes the project is able to achieve.
37. The University has provided no evidence that any of the collaborators has, or is likely to, withdraw from the project. Given the negative reactions already experienced (which presumably have already dissuaded the easily-dissuadable), the Commissioner considers that such arguments are speculative.
38. With respect to data sources, even though this is the area where the Commissioner has found there to be the highest possibility of harm, he nevertheless considers that the balance of the public interest favours disclosure.
39. Firstly, where various research projects hold personal data about individuals, those individuals have rights over the way that their personal data is processed. Depending on the basis on which this information is currently being processed, those individuals may have the right to withdraw their consent to have their data processed by the current controller, to prevent their data from being passed to Spectrum 10k or to ask the data controller to delete their personal data altogether. It is important that those people can exercise their data protection

rights if they do not wish to have their personal data passed to Spectrum 10k – even if that hinders the project's work.

40. Whilst the Commissioner recognises that a reduction in the quality of data available may make it more difficult for Spectrum 10k to go about its work, he is unconvinced that any loss of access to data will be of a level significant enough to cause issues. Furthermore, he also considers that the higher the degree of transparency, the more confident individuals will be in allowing Spectrum 10k access to their personal data.
41. The Commissioner is therefore satisfied that the balance of the public interest favours disclosure.

Section 40(2) - Third party personal data

42. Section 40(2) of FOIA allows a public authority to withhold information that is the personal data of third parties and where its disclosure would contravene data protection legislation. In particular, there must be a specific lawful basis on which the information could be published to the world at large (which is what FOIA requires).
43. Information will be personal data if it relates to a living individual who is identifiable, directly or indirectly, from the withheld information.
44. The Commissioner considers that the redactions the University has made to withhold information about research projects from which Spectrum 10k will draw is not personal data as it does not identify any individual. Nor will the names and addresses of the various organisations that provided letters of support to Spectrum 10k's application.
45. However, information about the previous areas of research the various collaborators have been involved in will be their personal data, as will individual contact details.
46. The Commissioner is not aware that any of the data subjects has given their consent for the information to be disclosed to the world at large. He has therefore proceeded on the basis that consent has not been provided and therefore the only possible lawful basis for disclosure would be if disclosure were necessary to satisfy a legitimate interest.
47. The Commissioner notes that Spectrum 10k is a large, highly ambitious project that intends to better understand how genetics and environmental factors affect those with autism and their families. He also notes that it is a project that has attracted criticism because of perceived links to eugenics (the practice of attempting to "improve" the genetics of a population by attempting to eradicate genetic conditions

deemed to be undesirable).¹ In August 2021, the National Autistic Society urged those considering participating to “look into this study carefully, and consider the potential benefits and harms, before deciding whether or not to participate” because of concerns about the way the project was intending to handle personal data such as DNA samples.

48. In the circumstances, the Commissioner considers that there is a very strong legitimate interest in understanding which researchers form part of this project and what their previous fields of expertise and research are. There is also a broader, though weaker, legitimate interest in general transparency around research projects.
49. Disclosure will be “necessary” to achieve a legitimate interest if it is a proportionate means of achieving a legitimate aim. If the legitimate interest can be satisfied by other, less-intrusive means, then disclosure will not be necessary as the same aim can be achieved in a manner that requires less intrusion into the privacy of the individuals concerned.
50. The Commissioner does not consider that disclosure of individuals’ contact details is necessary to achieve the legitimate interest. He is therefore satisfied that the University is entitled to rely on section 40(2) of FOIA to withhold this information.
51. However, in this case, the Commissioner considers that disclosure of the remaining information is necessary to achieve the legitimate interest as it could not be achieved via other means. The Project’s website does provide a list of its main staff and an overview of their previous areas of research – but it does not provide the level of granular detail set out in the withheld information.
52. Even where disclosure of personal data is necessary to satisfy a legitimate interest, the Commissioner must still balance that interest against the rights of the data subjects.
53. The University has argued that disclosure of the information being withheld would be contrary to the reasonable expectations of the data subjects and (presumably) would therefore cause them distress if it were disclosed.

¹ It is appropriate to note that the Spectrum 10k project’s founders have insisted that they are anti-eugenics and that this is not what the project is seeking to achieve.

54. The Commissioner is not satisfied that this is a reasonable expectation of the data subjects and, even if it were, disclosure is unlikely to cause them considerable distress.
55. Firstly, most of what the University has withheld relates to published papers that the various collaborators have previously authored or contributed to. To that extent, the Commissioner considers that most of what has been withheld is, in reality, already in the public domain – albeit that it will mostly be available in relatively niche academic publications and is not centrally collated. Information on previous academic posts held is, again, often already found in the public domain. It is not a reasonable expectation that the University will refuse to confirm that a particular individual has published a scientific paper when that individual is named on the paper.
56. The information in question relates to the work of the various academics involved and could not reasonably be said to relate to their private life – beyond indicating the areas of study which are of personal interest to them. To the extent that disclosure would intrude on their privacy, the Commissioner considers that any effects would be minimal.
57. The Commissioner is therefore satisfied that, in the circumstances of this case, the legitimate interest in disclosure outweighs the rights of the data subjects. Therefore the University would have a lawful basis on which to disclose this information.
58. As the information can lawfully be disclosed, the Commissioner does not consider that the University is entitled to rely on section 40(2) of FOIA to withhold it.

Right of appeal

59. 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

60. 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.
61. 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

Roger Cawthorne
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