

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 September 2022

Public Authority: The Governing Body of Lincoln College

Address: Monks Road
Lincoln LN2 5HQ

Decision (including any steps ordered)

1. The complainant requested emails sent by Lincoln College in the UK relating to its Saudi education business and visas. Lincoln College advised that the information was not held.
2. The Commissioner's decision is that Lincoln College does not hold the information within the scope of the request.
3. The Commissioner does not require Lincoln College to take any steps.

Request and response

4. On 19 November 2022, the complainant made the following request:
"Please release all emails/recorded information emanating from Lincoln College in the UK from January 2015 until the present day in relation to its Saudi education business."
5. Lincoln College responded on 24 January 2022 informing the complainant that the information was exempt under section 12 (cost limit) and also stated that in any case FOIA did not apply to the information as it related to a Saudi-based entity.
6. On 24 January 2022, the complainant made an amended request:
"Please release emails only emanating from Lincoln College in the UK from January 2015 until the present day in relation to its Saudi education business and visas. As you know emails sent or received through a company email account are generally not considered private. Employers are free to monitor these communications, as long as there's a valid business purpose for doing so. A FOI request is a valid reason."

I'm sure your IT team will be able to search all relevant email accounts on the server using keywords such as "KSA" "Saudi" "LCI" "Lincoln College International" AND "visas" which would capture all the emails in one go."

7. On 4 February 2022 Lincoln College issued an internal review response stating:

"In relation to visas may I remind you that the College only has to release records held in its own right. As explained in our response to you on 2 June 2020 I can confirm that Lincoln College does not, and never has, held the information you request. All staffing/HR issues are dealt with by the staff in KSA and all records are held in Country. Any related email correspondence in relation to visas are held solely on behalf of the KSA company and not on behalf of the College."

Scope of the case

8. The complainant contacted the Commissioner on 5 February 2022, dissatisfied with Lincoln College's response to their request.
9. The complainant considers that Lincoln College must hold emails in the UK that it has sent regarding its Saudi education business.
10. Therefore, the scope of the case is for the Commissioner to determine whether Lincoln College holds information for the purpose of FOIA.

Reasons for decision

Section 3(2)(a) of the FOIA – Information held by the public authority

11. Section 3(2) of FOIA sets out the legal principles that establish whether information is held for the purpose of the FOIA.
12. Section 3(2) of FOIA states:

"3.(2) For the purposes of this Act, information is held by a public authority if-

 - (a) it is held by the public authority, otherwise of behalf of another person, or
 - (b) it is held by another person on behalf of the authority."

13. In this case, the complainant is of the view that Lincoln College must hold, in its own right, emails that it has sent in respect of its Saudi education business.
14. The Commissioner's guidance¹ on section 3(2) states that when information is held by a public authority solely on behalf of another person, it is not held for FOIA purposes. However, information will be held by the public authority if the information is held to any extent for its own purposes.
15. The Upper Tribunal considered the meaning of section 3(2)(a) in the case of *University of Newcastle upon Tyne v the Information Commissioner and the British Union for the Abolition of Vivisection* [2011] UKUT 185 (AAC, 11 May 2011). It explained that the concept of 'holding' information for FOIA purposes "is not purely a physical concept, and has to be understood with the purpose of the Act in mind." This means that information may be present on a public authority's premises (or even its IT network) but not held by the authority for FOIA purposes. To be considered 'held' for FOIA purposes, there has to be "an appropriate connection between the information and the authority"
16. Each case needs to be viewed individually to determine whether a public authority holds information for its own purposes or solely on behalf of another person. There are several factors that will assist.
17. The weight attached to each one will vary from case to case. In some circumstances, one factor may outweigh all the others.
18. Factors that would indicate that the information is held solely on behalf of another person include:
 - the authority has no access to, use for, or interest in the information;
 - access to the information is controlled by the other person;
 - the authority does not provide any direct assistance at its own discretion in creating, recording, filing, or removing the information; or
 - the authority is merely providing storage facilities, whether physical or electronic
19. Lincoln College explained to the requester and the Commissioner that Lincoln College International ("LCI") is a Saudi registered company

¹ [Document history and version control \(ico.org.uk\)](https://ico.org.uk/document-history-and-version-control)

operating three colleges in the Kingdom of Saudi Arabia ("KSA"). In the group corporate structure, LCI sits underneath two subsidiaries of Lincoln College, which is a further education college based in Lincoln in the UK. The head office of LCI is in the KSA and it is run by a general manager and staff in the KSA. In particular, all HR and visa issues are dealt with by LCI in the KSA.

20. Lincoln College explained that it had taken legal advice to ensure that it responded correctly to FOIA requests and had been advised that it did not hold the information requested for the purposes of FOIA as the information is not needed for any functions conducted by Lincoln College and should LCI not exist, none of the information would exist.
21. It is the Commissioner's view that, as Lincoln College does not control access to the information requested or provide any direct assistance at its own discretion in creating, recording, filing, or removing the information, any information held by Lincoln College in the UK relating to the Saudi education business and visas is not information that is held by Lincoln College for the purposes of the FOIA.

Right of appeal

22. 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

23. 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.
24. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF