

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2022

Public Authority: University of Oxford
Address: University Offices
Wellington Square
Oxford
OX1 2JD

Decision (including any steps ordered)

1. The complainant requested from the University of Oxford (the University) information relating to the funds raised by the Friends of the National Libraries (FNL), to enable it to acquire the Honresfield Library, and the contribution made by Len Blavatnik or the Blavatnik Foundation. The University stated that the information requested is not held for the purposes of FOIA, but is held solely on behalf of another person, namely, the FNL.
2. The Commissioner's decision is that the requested information is not held by the University for the purposes of FOIA, since it is held on behalf of another person. Therefore, the Commissioner does not require it to take any steps as a result of this decision notice.

Request and response

3. On 29 March 2022 the complainant wrote to the University and requested information in the following terms:

"Any records/information the University holds that mention the Honresfield Library and the fundraising for it. Including any mention of Len Blavatnik/Blavatnik Foundation.

Any records/information the University holds created by the Friends of the National Libraries or its trustees that mention of the Honresfield Library and the fundraising for it. Including any mention of Len Blavatnik/Blavatnik Foundation.”

4. On 27 April 2022 the University responded and stated the information requested was not held for a University purpose. On the same day, the complainant asked the University for an internal review and challenged the assertion that the information requested was not held for a University purpose.
5. On 22 July 2022 the University provided its internal review response. It maintained its original position that the information requested is not held by the University for the purposes of FOIA.
6. During the Commissioner’s investigation of this case, the University informed the Commissioner that although its review response upheld its original position that the University did not hold the information requested for the purpose of FOIA, it decided to cite section 3(2) of FOIA. The University stated that the information requested is held solely on behalf of another person, namely, the FNL, which is a charity and a separate legal entity to the University.
7. The following analysis focuses on whether the University holds the requested information for the purposes of FOIA.

Reasons for decision

Section 3(2) – information held by a public authority

8. Section 3(2) sets out the two legal principles that establish whether information is held for the purposes of FOIA:

“For the purposes of this Act, information is held by a public authority if—

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority.”

9. The Commissioner's guidance¹ 'Information held by a public authority for the purposes of the Freedom of information Act' explains the circumstances in which information is considered to be held by a public authority for the purposes of FOIA.
10. The Commissioner considered the explanation from the University that it does not have direct interest or role in the fund-raising activities of the FNL, as it is a separate legal entity. The University said it does not have any direct interest in the specific donation made by Len Blavatnik to the FNL that allowed the FNL to complete its purchase of the Honresfield Library. It explained, it benefitted indirectly from that donation because the FNL donated to the Jane Austen's House (a separate entity) and the University's Bodleian Libraries, to hold jointly, manuscripts written by Jane Austen that were at the Honresfield Library.
11. The University informed the Commissioner that if the requested information was relating to the donation of the "Jane Austen manuscripts to the Bodleian" it would have complied with the request as that would be information clearly held for a University purpose. However, the complainant's request is limited to information relating to the fundraising undertaken by the FNL in connection with its acquisition of the Honresfield Library, and, in particular, the money it secured from Len Blavatnik. The University explained that it has no control over correspondence that Bodley's Librarian may possess in their role as a FNL trustee, beyond the fact that it is located on a University server. This matter, the University said, is for Bodley's Librarian to decide in their role as a trustee.
12. The University stated the Bodley's Librarian does not receive any clerical or administrative support from the University in respect of their role as a FNL trustee. The University also drew the Commissioner's attention to the fact and amount of Len Blavatnik's donation to the FNL that are matters which are already in the public domain².

¹ https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf

² <https://www.fnl.org.uk/pages/honresfield>

13. The Commissioner notes the complainant's argument, and that the complainant disputed the University's assertion the information requested was not held for a University purpose. His argument was on the grounds that "the Bodleian Librarian is an ex officio trustee of the FNL and holds this position by virtue of their office/position as University Librarian." The complainant is therefore of the view any information the University holds for FNL is held for the purposes of FOIA.
14. The complainant further argued the University and the Bodleian benefitted from this fundraising in relation to the acquisition of documents. He said he disbelieves there are no records or emails created by other staff (in their role at the Bodleian or Oxford University) relating to the acquisition of the collections by the Bodleian.
15. The Commissioner acknowledges the University's review response, and that it confirmed to the complainant the information he requested is not held by the University for the purposes of FOIA. It explained that "although the Bodleian Librarian is a trustee of the FNL by virtue of their University position, as the FNL is a separate legal entity to the University, any correspondence relating to the request held by the Bodleian Librarian, including that held on University servers, is not held for the purposes of his University activities, but for the purposes of his trusteeship of the FNL. Furthermore, the University does not have a direct interest in donations made to the FNL, so correspondence relating to these donations is likewise not held for a University purpose."
16. The Commissioner has considered the arguments from both parties. He consulted with his guidance and also considered the factors that would indicate the information is held solely on behalf of another person. The Commissioner is satisfied that the FNL is a separate legal entity from the University, and is therefore a separate 'person' within the meaning of FOIA. He has not been presented with any arguments that the requested information in this case, is held by the University to any extent for its own purposes.

The Commissioner's conclusion

17. Having considered all the factors to this case, the Commissioner is satisfied the requested information is not held by the University for the purposes of FOIA, since it is held only on behalf of another person. The Commissioner does not require the University to take any steps as a result of this decision notice.

Right of appeal

18. 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@justice.gov.uk.

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. 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.
20. 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

Phillip Angell
Head of Freedom of Information Casework
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF