

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 20 January 2023

**Public Authority:** The Council of the University of Cambridge

**Address:** The Old Schools  
Trinity Lane  
Cambridge  
CB2 1TN

#### **Decision (including any steps ordered)**

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1. The complainant has requested correspondence between members of staff and academic articles.
2. The University refused the request, citing section 12(1) as its basis for doing so.
3. The Commissioner's decision is that the University was incorrect to rely upon section 12(1) but the request can be refused under section 12(2). The Commissioner is also satisfied that the University complied with its obligations under section 16 (advice and assistance).
4. The Commissioner does not require the public authority to take any steps.

## Request and response

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5. On 16 June 2022 the complainant wrote to the University and made the following request:

"1. All emails sent by [Redacted], then head of the international office, to [Redacted] in April 2006

2. All email exchanges between [Redacted], then Vice-Chancellor, and [Redacted] on the 20 of April 2006

3. All emails by [Redacted] that mention "Confucius"

4. A message sent from [Redacted] of the Chinese Embassy to [Redacted] sent 07/01/10 and received by the latter on 11/01/10

5. All other emails from PRC embassy staff mentioning a Confucius Institute at Cambridge

6. The "CHINA PAPER" written by [Redacted] and dated 15/02/11, and associated with the Cambridge Uni Development Office

7. [Redacted]'s "Modern China Concept Paper" prepared for the Vice-Chancellor in November 2010, and all drafts of it and all documents associated with it (attachments)

I am confident that all specific documents and emails detailed here exist and are held by the university, so I look forward to receiving a full reply in good time."

6. The University responded on 11 July 2022, refusing the request under section 12(1), a position it upheld at internal review.

## Reasons for decision

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### Section 12 - cost of compliance exceeds appropriate limit

7. Section 1 of FOIA states:

“(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.”

8. Section 12 of FOIA states:

- (1) “Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
- (2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

9. The appropriate limit is charged at a flat rate of £25 per hour, with a total limit of £450 hours, or 18 hours work, for a public authority such as the University.

10. When considering section 12, a public authority can only take into account the following costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004<sup>1</sup> ('the Regulations'):

- (a) determining whether it holds the information,
- (b) locating the information, or a document which may contain the information

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<sup>1</sup> [The Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2004/1898)

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it.”

11. When citing section 12, the Commissioner expects a public authority to provide a reasonable estimate as to how long compliance with the request would take. This estimate should be based on cogent evidence, on the quickest method of gathering the requested information and usually will involve the public authority conducting a sampling exercise.
12. In its refusal notice the University explained ‘You have requested a wide range of very old records, often in relation to named members of former staff, that are neither held within one administrative Division nor one academic Department.’
13. The University has clarified to the Commissioner that the request relates to information dated between 2006 and 2011 and all but one of the individuals named in the request have now left the University. The University has elaborated that:

“These staff were based variously in areas of the University that are now called the Strategic Partnerships Office, the Vice-Chancellor’s/Pro-Vice-Chancellors’ Offices, and Cambridge University Development and Alumni Relations (CUDAR). All of these offices use separate (and numerous) systems and structures to hold their paper and electronic records, and the IT/email accounts of departed staff are erased a few months after their departure in line with regular timetables, and so there was no way to initiate a centralised technical search for any information within scope.”
14. The University has explained that, upon receipt of the request, it contacted ‘a range of relevant senior individuals to enquire as to whether any records meeting the various descriptions were or might be held in archived or historical folders and files, whether electronic or paper-based.’ It made the same enquiries upon receipt of the complainant’s internal review request.
15. Returning to paragraph 11, the Commissioner expects a public authority to provide an estimate as to how long compliance with the request would take. He notes that the University has not done so in this instance. However, the Commissioner accepts that due to the broad nature of this request, and the age of the information requested, the quickest method of retrieval appears to be a manual search of records held in the aforementioned departments. Whilst the University has not put forward a figure, the Commissioner is satisfied that these searches would exceed 18 hours and therefore the threshold has been met.

16. However, the Commissioner does not believe that the University has applied the correct subsection of section 12 in this instance. Returning to the legislation, section 12(1) exempts a public authority from providing information if to do so would exceed the appropriate limit and section 12(2) exempts a public authority from confirming whether it holds the information if to do so would exceed the appropriate limit.
17. The University has explained that all of the enquiries it made to the relevant departments failed to identify any relevant information. Furthermore, the University has implied that, in line with its Master Records Retention Schedule, the information which is being requested would likely have been deleted.
18. The University explained that it 'considered responding to the effect that the information requested was not held but decided that the diffuse nature of many of [Redacted] questions (in particular Q5), and the impossibility of carrying out an exhaustive (and to a large extent manual) search of old/archived/superseded/scattered records within 18 hours of staff time, meant that refusing the request under section 12(1) was the more correct approach.'
19. As the Commissioner has explained, section 12(1) exempts a public authority from communicating information but section 12(2) applies when a public authority cannot confirm whether the information is held within the appropriate limit. Whilst it appears, on the balance of probabilities, that no information within the scope of the request is held, he accepts that for the University to confirm as such would exceed the appropriate limit.
20. Therefore, the Commissioner is satisfied that the University is entitled to refuse the request in accordance with section 12(2), not section 12(1).

### **Section 16 – advice and assistance**

21. When refusing a request under section 12, a public authority needs to offer meaningful advice and assistance to the complainant where reasonable. The aim of this advice and assistance is to help the complainant refine their request to one that might be able to be dealt with within the appropriate limit.
22. In its refusal notice the University explained to the complainant that it couldn't offer any suggestions as to how to bring compliance with the request within the appropriate limit.
23. The Commissioner agrees, looking at the nature of the request and the time it would take to search and manually review the relevant systems,

the Commissioner doesn't see how the request could be meaningfully refined. Therefore, the Commissioner is satisfied that there's no section 16(1) breach in this instance.

## Right of appeal

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24. 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](mailto:grc@justice.gov.uk)

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

25. 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.
26. 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

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**