

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 August 2023

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

Decision (including any steps ordered)

1. The complainant has requested information held by University College London (UCL) about an investigation into the working culture at its School of Slavonic and Eastern European Studies (SSEES).
2. The Commissioner's decision is that UCL is entitled to rely on section 36(2)(b)(ii) and section 36(2)(c) (prejudice to the effective conduct of public affairs) of FOIA as its basis for refusing part one of the complainant's request.
3. The Commissioner has also decided that UCL has correctly applied section 40(2) (personal data) of FOIA to part two of the complainant's request.
4. The Commissioner does not require further steps.

Request and response

5. On 4 June 2022, the complainant sent correspondence to UCL which contained a number of requests for different sets of information. UCL considered the following parts of the complainant's correspondence to

be requests for information that would fall within the scope of FOIA:

- part one: "Immediately release the Environmental Investigation report."
 - part two: "Details of all other independent interviews UCL conducted based on the names I provided to UCL."
6. UCL advised the complainant that it was refusing to provide the information held relevant to part one of the request, citing section 36(2)(b)(ii), and section 36(2)(c), of FOIA. UCL provided its reasoning for the decision and confirmed that it considered the public interest to favour maintaining these exemptions.
 7. UCL also confirmed that it was refusing part two of the complainant's request under section 40(2), by virtue of section 40(3A)(a), of FOIA.
 8. At the internal review stage, UCL upheld its original decision.

Scope of the case

9. The Commissioner will consider the following:
 - Whether UCL is entitled to rely on section 36(2)(b)(ii) and 36(2)(c) as its basis for withholding the information relevant to part one of the request.
 - Whether UCL is entitled to rely on section 40(2) of FOIA as its basis for withholding the information relevant to part two of the complainant's request.

Reasons for decision

Part one of the request

Section 36(2) – prejudice to the effective conduct of public affairs

10. Section 36(2)(b)(ii) provides that information can be withheld if disclosure would, or would be likely to, inhibit:

"the free and frank exchange of views for the purposes of deliberation."

11. Section 36(2)(c) protects information if its disclosure:

“would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.”
12. For any part of the exemption at section 36 to be engaged, the “qualified person” (QP) within the public authority is required to give a reasonable opinion about the likelihood of prejudice or inhibition.
13. When determining whether the QP’s opinion is a reasonable one, the Commissioner takes the approach that if the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable person could hold – then it is reasonable.
14. The Commissioner is satisfied that the Provost and President of UCL is authorised as the QP under section 36(5) of FOIA.
15. UCL has provided evidence that, upon receipt of the request, it sought the advice of the QP, who was provided with a copy of the withheld information and advice on the application of section 36 to the request.
16. On 23 June 2023, the QP advised that, in their opinion, the inhibition specified in section 36(2)(b)(ii) “would be likely” to occur, if the requested information were to be disclosed. They also confirmed that they considered section 36(2)(c) to be engaged as the release of the information “would be likely” to prejudice the effective conduct of public affairs.
17. The QP advised that, due to the nature of the issues being investigated, that being the working culture within a department, they considered openness and candour to be essential in order to inform the University’s processes, and to ensure that questions relating to the investigation were adequately assessed and addressed. They stated that the process would be put at risk if individuals did not feel that they had a safe space in which to express their frank and honest opinions about sensitive issues.
18. The QP went on to say that if individuals thought that the report would be published, there is a significant risk that the investigatory manager would be much more circumspect in their investigation. This would result in relevant members of UCL not being properly apprised of the circumstances surrounding the concern, or provided with the information necessary to conclude a proper assessment of any errors and deficiencies in UCL’s processes.
19. The QP has also said that it is important that a safe space is provided in which to make decisions; if this was not possible, the ability to properly engage on sensitive issues would be diminished, and UCL would not be

able to identify as effectively where potential improvements to workplace practices could be made.

20. Having inspected the withheld information, the Commissioner is satisfied that the QP's opinion is one that a reasonable person could hold.
21. The Commissioner therefore finds that the exemptions at section 36(2)(b)(ii) and 36(2)(c) are engaged in respect of part one of the request.

Public interest test

The complainant's position

22. The complainant has said that they believe that the circumstances relevant to this request are virtually identical to that considered by the Commissioner in decision notice [IC-96056-F5J7](#), issued on 19 January 2022. In that case, whilst the Commissioner decided that section 36 was engaged, he considered that the public interest favoured the disclosure of the report held by Imperial College London (Imperial) which had investigated allegations of bullying levelled at two of its senior employees.
23. The complainant has also referred to two previous environmental investigation reports that were published in full by UCL, stating that it should have taken the same approach and proactively published the requested report.
24. The complainant has said that there is a considerable public interest in having a full understanding of the investigation that took place and any failings that were identified within the investigation report. Given this, he argues that the requested information should be disclosed.

UCL's position

25. UCL advised that it considered the public interest factors in support of disclosure of the report to be as follows:
 - A general interest in transparency and accountability, and allowing the public to understand how public authorities deal with sensitive issues, including those that relate to allegations of inappropriate behaviour within an organisation.
 - Due to the serious allegations being investigated, disclosure may assist in providing details of UCL's processes, and to ensure that questions relating to the investigation were adequately assessed and addressed.

26. With regard to the public interest factors in favour of withholding the information, UCL has said that it considers openness and candour to be essential to the process. It argues that it would undermine the integrity of the process if investigations of this nature could not be conducted with an assurance that individuals have a safe space to speak freely, frankly and honestly when sharing information with the investigator. UCL argues that this would then lead to poorer decision making, which would not be in the public interest.
27. With regard to decision notice IC-96056-F5J7, UCL said that, given the seniority of the two individuals that were under investigation at Imperial, and the nature of the allegations that had been made that led to that investigation, there was a much stronger public interest in the release of the information in that case.
28. UCL has also said that the SSEES Report was finalised in 2020, and following its conclusion, there was significant engagement with SSEES staff to share the recommendations and discuss ways to implement them. UCL said that many of the recommendations have now been worked through, and that active steps have been taken to resolve any problems with the working culture within the department. It goes on to say that releasing the report in response to the request may ignite tensions which have already been dealt with.
29. UCL argues that if the investigation report were to be disclosed, and individuals then felt they did not have a safe space where they could share experiences and articulate the issues from their own perspective with an independent and impartial figure, then this would make it harder to resolve issues about workplace environments. This could result in possible poor work conditions, which would hurt staff themselves, and UCL's ability to attract and retain high calibre staff. UCL claims that this would then affect its public ability to teach and research to high standards, which would not be in the public interest.

The Commissioner's finding

30. The Commissioner is satisfied that the circumstances and withheld information relevant to decision notice IC-96056-F5J7 are significantly different to this case. In particular, he considers that the focus of the investigation at Imperial, which was specifically about the conduct of two senior members of staff, and the outcome, carried significant weight in support of the public interest in disclosure of the information.
31. The Commissioner has also considered the two environmental investigation reports published by UCL. The first of these reports was published in June 2022, following concerns raised by students relating to the "culture, education practices and environment" at the [Bartlett School](#)

[of Architecture](#) (BSA) at UCL. The second report, published in October 2022, was commissioned following serious concerns and allegations raised by students and staff about the culture and functioning of the [Slade School of Art](#) (SSA) at UCL. In both those cases, the reports detail allegations made by students about the behaviour of academic staff, and make recommendations that required immediate attention by UCL.

32. The Commissioner again considers the circumstances relevant to the SSA and BSA investigation reports, as well as their content, to be significantly different to that relevant to the SSEES report. In particular, he considers it pertinent to note that the purpose for commissioning the previous two investigations is not the same, nor were the outcomes.
33. The matters considered in the SSEES investigation focussed on internal matters; the working relationships between staff, the culture and working practices within a department. The two previous investigations both concerned allegations and complaints made by students about unfair treatment and the behaviour and teaching of academic staff.
34. The Commissioner accepts that it may be the case that individuals had previously raised concerns about the behaviours of certain members of staff within SSEES; this is indeed what the complainant has indicated in their submissions. It is right and proper that UCL should be able to provide reassurance that it treats such concerns seriously, and that any outcomes are fair and just for all concerned. However, UCL has made it very clear to the complainant that there are separate mechanisms in place for individuals to raise concerns about individual staff members.
35. It is apparent to the Commissioner that the primary purpose of this investigation was to identify ways in which the working culture within SSEES could be improved, and not to point the finger of blame at certain individuals.
36. In addition, the Commissioner considers it pertinent that information collated from the interviews are from the interviewees' perspective and are often only an expression of personal opinion rather than matters of fact that have been substantiated (as this was not the purpose of the investigation). Individuals were also not given the opportunity to respond to any comments made about them. The Commissioner therefore has concerns that there is a real risk that disclosure of the report would be taken out of context and would bias other people's opinions about certain individuals. This, in the Commissioner's view, would be unfair and would undermine the integrity of the process, and what it sets out to achieve.
37. Furthermore, the Commissioner considers that individuals who participated would have expected that the information that they

provided would only be used to assist the investigator in making their recommendations, and would not be released to colleagues, and the wider public. Such individuals may be far more reticent in the future about the information that they provide if they are aware that controversial comments that they would not have said in an open space will be published.

38. Given the weight of the factors in favour of withholding the information in this instance, the Commissioner considers that there must be strong and compelling public interest arguments which support disclosure for the balance to tip in favour of releasing the report.
39. The Commissioner accepts that UCL should be as open and transparent as possible about the working environment of its staff and any problems that may arise in relation to this.
40. However, it is the Commissioner's view that the actions taken by UCL following the completion of the investigation go some way in meeting the public interest in this case.
41. UCL has provided evidence of how details of the investigation and its recommendations were communicated to staff. UCL has also provided details of the collaboration work which subsequently took place to improve the working environment for all staff within SSEES.
42. The Commissioner must consider the circumstances that are relevant to the request that is under consideration. Whilst he regards it to be important that authorities show that they deal with allegations of bullying, harassment, or similar, appropriately, the Commissioner is concerned that there is a real risk that disclosure of the requested information in this case would actually cause harm to the processes which UCL has in place to deal with such issues in the most appropriate manner. Furthermore, he considers that disclosure of the information may divide and create tension amongst colleagues in SSEES, and lead to conflict, mistrust and animosity, which would not be in anyone's interest.
43. The Commissioner has decided that, in the circumstances of this case, the public interest in protecting the integrity of the process for the purpose of improving the working environment of all staff outweighs the public interest factors in favour of disclosure in this instance.

44. **Part two of the request**

Section 40 – personal information

45. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A), (3B) or 40(4A) is satisfied.
46. In this case, the relevant condition which UCL has stated that it is relying upon in response to part two of the request is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the data protection principles relating to the processing of personal data, as set out in Article 5 of the UK General Data Protection Regulation (UK GDPR).
47. Section 3(2) of the Data Protection Act 2018 (DPA) defines personal data as:
- “any information relating to an identified or identifiable living individual.”
48. The two main elements of personal data are that the information must relate to a living individual and that person must be identifiable.
49. The Commissioner notes that the complainant has confirmed that they are happy for names of staff, other than those which they have referred to in their various sets of correspondence to UCL, to be redacted before disclosure.
50. The Commissioner has considered the withheld information relevant to part two of the request. It consists of information that was provided by staff and includes details about their roles, experiences, opinions, thoughts and comments about their workplace environment and also those they work with.
51. The Commissioner notes that the department which was relevant to the investigation is relatively small, with a limited number of staff. Having considered this, and the content of the information, he is satisfied that even if the withheld information were to be disclosed with all names redacted, individuals would still be identifiable from such information, at the very least by their colleagues.
52. It is the Commissioner’s view that the individuals who can be identified from the withheld information would not have any reasonable expectation that the details they provided for the use of the investigating officer, and which would reveal their identity, would be placed into the public domain. In addition, those who may be identifiable from the comments of others would also not, in the Commissioner’s

opinion, have had an expectation that their personal information would be released in this way.

53. The Commissioner accepts that there is a legitimate interest in understanding how UCL manages matters that relate to the working culture within its departments, particularly when this directly relates to the wellbeing of staff.
54. However, the Commissioner considers that the information shared by UCL about the outcome of the investigation and the steps that were being taken to improve the working environment, goes some way in meeting any legitimate interest in this instance.
55. The Commissioner is of the view that disclosure of the withheld information in this instance would cause harm and distress to individuals who will be identifiable from such information.
56. The Commissioner considers that there is insufficient legitimate interest in this case to outweigh the relevant individuals' fundamental rights and freedoms, and that disclosure of personal information would therefore not be lawful in this instance.
57. Given the above, the Commissioner has determined that disclosing any of the information held that is relevant to part two of the complainant's request would contravene the first data protection principle, which requires personal data to be processed fairly and lawfully.
58. The Commissioner therefore concludes that UCL is entitled to rely on section 40(2) of FOIA as its basis for withholding the information relevant to part two of the complainant's request.

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

Suzanne McKay
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