

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 February 2024

Public Authority: The Governing Body of the University of Oxford

Address: University Offices
Wellington Square
Oxford
OX1 2JD

Decision (including any steps ordered)

1. The complainant has requested information about anonymous donations. The University of Oxford ('the University') relied on sections 43(2) and 40(2) of FOIA to withhold some information within scope of the request. These exemptions concern commercial interests and personal data, respectively. The University subsequently advised the Commissioner that it would disclose a small amount of information that it had previously withheld.
2. The Commissioner's decision is that the University is correct to apply section 43(2) and section 40(2) of FOIA to information within scope of the complainant's request that it continues to withhold. The University breached section 1(1) and section 10(1) in respect of the information it now intends to disclose.
3. The University must take the following step to ensure compliance with the legislation:
 - If it hasn't already done so, disclose to the complainant the information discussed at paragraph 20 of this notice.
4. The University must take this step 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.

Background

5. In April 2023, the Commissioner made a decision in IC-217933-T3T1¹ about a request for information about a donation to the University ('Donation 2').
6. The Commissioner found that sections 40(2) and 43(2) were engaged in respect of most of the information – ie the name of the donor and information in an associated 'Committee to Review Donations' report (comprising information in an extract from Committee minutes in a document called Annex A, a document titled 'Appendix One' and some information in an 'Annex I' document.)
7. The Commissioner instructed the University to disclose the remaining information in the 'Annex I' document which he'd found wasn't exempt.
8. The Commissioner also found that some additional information which the University had considered wasn't in scope of the request – an 'Appendix One [to 2014 report]' document - **was** in scope of the request. He instructed the University to either disclose that information or issue the complainant in that case with a refusal notice.
9. As a result of the decision, on 16 May 2023 the University disclosed to the complainant in that case the information in the Annex 1 document that the Commissioner had found wasn't exempt. It also provided that complainant with a refusal notice in respect of the 'Appendix One [to 2014 report]' document. The University relied on section 43(2) and 40(2) of FOIA to withhold that document.
10. The complainant in that case has appealed the IC-217933-T3T1 decision.

Request and response

11. The complainant in this case made the following information request to the University on 2 August 2023:

"1) Please state the total in

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024977/ic-217933-t3t1.pdf>

- a) Donations
- b) Research grants

Your university has received from Azerbaijani nationals in each of the last five financial years and the current financial year to date.

Please state what these payments were for (project title or sponsorship), and the identity of the benefactor.

Where this person is a public figure (e.g. Ilham Aliyev) they can have no reasonable expectation of privacy under the DPA in relation to financial contributions to a public body.

Please limit this to donations or research grants over £50,000.

2) Please state the total in

- a) Donations
- b) Research grants

Your university has received from Azerbaijani companies in each of the last five financial years and the current financial year to date.

Please state what these payments were for (project title or sponsorship), and the identity of the benefactor.

Please limit this to donations or research grants over £50,000.

3) Please state the total in

- a) Donations
- b) Research grants

Your university has received from Azerbaijani public authorities or other Azerbaijani state sponsored bodies in each of the last five financial years and the current financial year to date.

Please state what these payments were for (project title or sponsorship), and the identity of the benefactor.

Please limit this to donations or research grants over £50,000.

4) Please state the total amount of funding received by the university to support the Oxford Nizami Ganjavi Centre in each of the last five financial years and the current financial year to date.

Please state the entity/s that was/were the source/sources of these funds.

- 5) Please provide a copy of any due diligence reports completed by the university to verify the source of funds for these payments.
 - 6) Please provide a copy of any due diligence reports conducted in relation to Nargiz Pashayeva, sister in law of Azerbaijani president Ilham Aliyev, ahead of her appointment to the board of the Oxford Nizami Ganjavi Centre.
 - 7) Please provide a copy of the minutes of the meetings of the University's Committee to Review Donations in relation to the acceptance of donations for the Oxford Nizami Ganjavi Centre."
12. In its response to this request dated 31 August 2023 the University advised it hadn't received any donations or research grants from Azerbaijani nationals, Azerbaijani companies or Azerbaijani public authorities or other Azerbaijani state sponsored bodies during the period covered by the request. Consequently, it said, there are no due diligence reports or minutes within scope of items 5 to 7.
 13. On 4 September 2023, the complainant submitted the following request:

"As a follow up request, could you look for information for the same information for the previous five financial years?

In relation to Nargiz Pashayeva, can I check even if there was no financial donation, whether given her status as a relative of a politically exposed person, was there any due diligence report on her appointment?"
 14. In its response to this request dated 28 September 2023 the University confirmed that it hadn't received any research funding within scope of the request.
 15. The University provided details of two donations made to the Oxford Nizami Ganjavi Centre by an Azerbaijani national – one in 2017/18 (ie Donation 2) and the other in 2014/15 ('Donation 1'). It refused to provide the identity of the individual associated with the donations under section 40(2) of FOIA.
 16. With regards to the request for "due diligence" reports associated with the donations, the University confirmed it was withholding information in the relevant 'Committee to Review Donations (CRD) reports that it holds under section 40(2) and 43(2).
 17. The University noted that its response to a similar request had been the subject of the Commissioner's decision in IC-217933-T3T1. It noted that the Commissioner had upheld the University's use of section 40(2) in respect of the donor's identity and the information relating to them in

the CRD reports, as well as in relation to members of staff. The Commissioner had also upheld the University's application of section 43(2) in respect of information in the CRD reports relating to previous donation proposals that the University had rejected.

18. Finally, the University confirmed that it didn't hold any "due diligence" reports relating to Nargiz Pashayeva's appointment to the board of the Oxford Nizami Ganjavi Centre.
19. In its internal review of 30 October 2023, the University maintained its position.
20. In correspondence to the Commissioner on 28 January 2024, the University advised that, having reconsidered the information within scope of the request, it's able to disclose a small amount of information in the CRD report associated with Donation 1, although it considers this information won't be of interest to the complainant.

Scope of the case

21. The decision in IC-217933-T3T1 concerned one donation that an individual had made to the University – Donation 2. The current request of 4 September 2023 covers that same donation and an earlier donation (Donation 1).
22. Regarding section 43(2) and in respect of Donation 2 and the associated CRD report, this investigation will consider whether the University is entitled to rely on section 43(2) of FOIA to withhold information in the 'Annex 1' document, the 'Appendix One' document and the entire 'Appendix One [to 2014 report]' document. Regarding Donation 1, the investigation will consider whether the University is entitled to withhold information in the 'Annex C' document under that exemption.
23. Regarding section 40(2) and in respect of both donations, this investigation will consider whether the University is entitled to rely on section 40(2) to withhold the name of the donor. In respect of Donation 2 the investigation will also consider whether information in the 'Annex A', 'Annex 1' and 'Appendix One' documents engages section 40(2). In respect of Donation 1, the investigation will consider whether the University is entitled to withhold some information in 'Annex C' under that exemption.
24. The Commissioner will finally consider a procedural matter.
25. Given the similarity between requests in IC-217933-T3T1 and the current case, the University has confirmed that to support its position in this case it's relying on the submission it provided to the Commissioner

in relation to IC-217933-T3T1. It's also relying on other information it's provided to the First-tier Tribunal for the appeal of that decision, a copy of which it's provided to the Commissioner.

26. The Commissioner has also considered the University's refusal of 16 May 2023 to the complainant in IC-217933-T3T1.

Reasons for decision

Section 43(2) – commercial interests

27. Under section 43(2) information is exempt information if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).
28. Regarding Donation 2 considered in IC-217933-T3T1, the Commissioner had found that section 43(2) wasn't engaged in respect of some of the information within scope of Donation 2. However, he found that section 43(2) had been correctly applied to the remaining information in the CRD report that the Commissioner considered in that notice.
29. For the reasons given in IC-217933-T3T1, the Commissioner finds that that same information remains exempt under section 43(2).
30. The University has subsequently advised that it considers that the entire 'Appendix One [to 2014 report]' document is exempt under section 43(2). This is because the information relates to a rejected donation.
31. In its refusal notice, the University advised the complainant in the earlier case that potential donors would be deterred from giving to the University, as there would be a risk that they'd suffer reputational damage. Such damage would be likely to occur, irrespective of the reasons for rejecting a donation and whether they related to ethical or reputational factors.
32. The University said that if it were known that it had rejected a donation, it would be assumed that it was because the donor was considered to be unsuitable. Knowledge of this risk would reduce the pool of major donors willing to consider the University as a potential recipient. This would harm the ability of the University to raise the funds that help to maintain its high standards of teaching and research. The University is competing against other institutions, both nationally and internationally, for the best students and staff, and for the support of major donors (those able to provide £100,000 or more). The University confirmed that disclosing information about rejected donations would therefore be likely to prejudice its commercial interests.

33. Public interest arguments associated with disclosing the information in this case were discussed in IC-217933-T3T1. In its refusal of 16 May 2023, the University re-stated those arguments.
34. For the reasons given in IC-217933-T3T1 and those the University gave above, the Commissioner finds that the 'Appendix One [to 2014]' document is exempt from disclosure under section 43(2) and that the public interest favours maintaining this exemption. Since section 43(2) is engaged in respect of the entire document, it's not necessary for the Commissioner to consider the University's application of section 40(2) to some of the information in it.
35. Regarding Donation 1, the University has applied section 43(2) and section 40(2) to some of the information in the 'Annex C' document and section 43(2) **only** to a small amount of information in this document.
36. The information to which the University has applied section 43(2) concerns a rejected donation and, as such, the Commissioner is satisfied that this information is exempt under section 43(2) for the reasons given in IC-217933-T3T1. Since section 43(2) is engaged in respect of this information, it's not necessary for the Commissioner to consider the University's application of section 40(2) to some of the same information.

Section 40(2) – third party personal data

37. Under section 40(2) of FOIA information is exempt information if it's the personal data of another individual and a condition under section 40(3A) is satisfied.
38. In this case the relevant condition is contained in section 40(3A)(a). This applies where disclosing the information to any member of the public would contravene any of the principles relating to the processing of personal data as set out in Article 5 of the UK General Data Protection Regulation (GDPR).
39. Regarding Donation 2 considered in IC-217933-T3T1 the Commissioner had found that section 40(2) wasn't engaged in respect of some of the information within scope of Donation 2. However, he found that section 40(2) had been correctly applied to the remaining information in the CRD report that the Commissioner considered in that notice.
40. For the reasons given in IC-217933-T3T1, the Commissioner finds that that same information – including the name of the donor - remains exempt under section 40(2).
41. The Commissioner has next considered the information in the Annex C document associated with Donation 1, which includes the name of the

donor. First, he's satisfied that the information to which the University has applied section 40(2) **only** can be categorised as personal data. This is because it relates to the donor and others, and they can be identified from it.

42. The Commissioner has next considered whether disclosing the information would contravene one of the data protection principles, namely the principle set out under Article 5(1)(a) of the UK General Data Protection Regulation (GDPR). This says that personal data must be processed lawfully, fairly and in a transparent manner.
43. To be lawful one of the lawful bases under Article 6(1) of the UK GDPR must apply to the processing of the personal data. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child."
44. The complainant considers that the funds that the University has received may be the proceeds of corruption. The Commissioner accepts that this interest is an entirely legitimate interest for them to have.
45. The University has accepted that there's a legitimate interest in knowing who it accepts money from and whether accepting such money was in accordance with legal and ethical principles.
46. The Commissioner also considers that disclosing the information would be necessary to satisfy this interest as there are no less-intrusive methods of determining either the source of the donation or matters that the University reviewed when it considered the donation.
47. The Commissioner recognises that there is a legitimate interest in this given the size of the donation which was between £500k and £999K.
48. He is also aware of the concerns raised by the complainant and others about so-called "reputation laundering" in which an individual, company or even a foreign state attempts to improve its international reputation by donating to, or investing in, British cultural heritage.
49. However, in this case, the Commissioner is not persuaded that the legitimate interests outweigh the rights of the data subjects.
50. As in IC-217933-T3T1, in the case of the donor the University has a published process and criteria that govern its decision to accept or reject

donations in excess of £20,000. For endowments, it also puts in place regulations to govern what the endowments can and cannot be used for. The University has previously directed the Commissioner's attention to regulations that it had published – including the regulation specific to the Oxford Nizami Ganjavi Centre which sets out what the funds may be used for.

51. The withheld information doesn't demonstrate that the public authority failed to carry out due diligence when considering a donation or that it failed to follow its published process.
52. With respect to the personal data of the other individuals, the Commissioner is satisfied that these individuals would have the reasonable expectation that their personal data wouldn't be disclosed to the wider world under FOIA.
53. For the reasons given in IC-217933-T3T1, for the reasons at paragraph 50 of the current notice, because the value of Donation 1 is substantially smaller than that of Donation 2, and because of the data subjects' reasonable expectations, the Commissioner is satisfied that the rights of the data subjects outweigh the legitimate interest in disclosure. As a result, there's no lawful basis on which the information could be published and so the University is entitled to rely on section 40(2) of FOIA to withhold the information in the 'Annex C' document to which it's applied this exemption.

Procedural matters

54. Section 1(1) of FOIA requires a public authority to confirm to an applicant whether it holds information that's been requested and to communicate it if the information's held and isn't exempt from disclosure. Under section 10(1) the authority must comply with section 1(1) promptly and within 20 working days of the request.
55. In this case, the complainant submitted their request on 4 September 2023 and the University has now identified further information it will disclose. As such the University breached sections 1(1) and 10(1).

Right of appeal

56. 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

57. 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.
58. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF