

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

### **Decision notice**

**Date:** 4 June 2024

**Public Authority:** The Governing Body  
**Address:** St Antony's College  
62 Woodstock Rd  
Oxford  
OX2 6JF

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

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1. The complainant has made a four part request for information relating to an agreement between Tsinghua University and St Antony's College. The Governing Body of St Antony's College (the college) provided the information falling within the scope of parts 1 and 3 of the request but refused to provide the information requested in parts 2 and 4 of the request citing section 40(2) (third party personal data) of FOIA.
2. The Commissioner's decision is that the college has failed to comply with section 1 of FOIA due to it not conducting appropriate searches for information falling within the scope of part 4 of the request. In addition, the college has failed to demonstrate that section 40(2) of FOIA is engaged.
3. The Commissioner requires the college to take the following steps to ensure compliance with the legislation:
  - disclose the information requested under part 2 of the request,
  - disclose the information it has already located falling within the scope of part 4 of the request, and
  - conduct appropriate searches for any further information falling within the scope of part 4 of the request and, if further information is identified, disclose it.
4. The college must take these steps within 30 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.

## Request and response

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5. On 16 November 2023, the complainant submitted the following request for information to the college:

“I am emailing in relation to an agreement between Tsinghua University and St Antony's College on [sic]. I would like to know the following:

- When the College admitted its first Visiting Academics (Postdoctoral Fellows) from Tsinghua University and over how long this partnership has existed.
- The names of all academics or other individuals from Tsinghua University who have acted as Visiting Academics (Postdoctoral Fellows) at St Antony's College.
- Any records and receipts of financial transactions, donations and/or other resources exchanged in relation to the Postdoctoral Fellows / Visiting Academics from Tsinghua University.
- Names of individuals on boards or committees who select Visiting Academics (Postdoctoral Fellows) from Tsinghua University. If this is not available, please provide some context on the admissions process for this position.”

6. The college responded to the complainant on 23 November 2023. It provided the complainant with information falling within the scope of parts 1 and 3 of the request. It refused to provide the information requested in part 2 of the request citing section 40(2) of FOIA. It stated that it did not hold information falling within the scope of part 4 of the request.
7. The complainant wrote to the college on 24 November 2023 requesting that it carry out an internal review of its response to parts 2 and 4 of the request.
8. The college provided the outcome of its internal review on 4 December 2023, maintaining its position in respect of part 2 of the request. However, it would appear that the college revised its position in respect of part 4 of the request, refusing to provide the requested information and again citing section 40(2) of FOIA as its basis for doing so.

## Scope of the case

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9. The complainant contacted the Commissioner on 6 December 2023 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of his investigation is to look at whether the college was entitled to withhold the information requested in part 2 of the request for information. He will also look at whether the college does hold the information requested in part 4 of the request and, if so, whether it is entitled to withhold it.

## Reasons for decision

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### Section 1 – Information not held

11. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled:
  - a) to be told if the authority holds the information and,
  - b) to have the information communicated to them if it is held and is not exempt information.
12. Where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of “the balance of probabilities”.
13. In other words, in order to determine on such complaints, the Commissioner must decide whether it is more likely than not that the public authority holds any information which falls within the scope of the request (or held it at the time of the request).
14. In this case, the request relates to the names of individuals on boards or committees who select Visiting Academics (Postdoctoral Fellows) from Tsinghua University.

### The college's position

15. In its submission to the Commissioner, the college stated that it does not “formally collect information regarding the membership of selection panels for its Visiting Academic programmes”.

16. The college has provided the Commissioner with a copy of its Legitimate Interests Assessment (LIA)<sup>1</sup> that it carried out before its initial response to the complainant's request for information, where it decided that there was no legitimate interest in disclosing personal data relating to members of the college. It therefore did not undertake any searches for the requested information, on the basis that it considered any such information to be exempt if held.
17. As part of the Commissioner's investigation, he advised the college that if no or inadequate searches were done at the time of dealing with the request then it would need to rectify this.
18. The college confirmed that, as a result of the Commissioner's initial letter, a search had now been carried out and had identified the following:
  - "Partial information is provided in letters of recommendation for nominated Academic Visitors. This is held in electronic Word documents and is not systematically provided or recorded. It has now been provided by the Memberships Manager.
  - The key point of contact for the programme has been asked to search their [firstname.lastname@ox.ac.uk](mailto:firstname.lastname@ox.ac.uk) email."
19. As a result of these searches the college identified that it does hold information falling within the scope of part 4 of this request.
20. However, the college stated that any information held falling within the scope of part 4 of the request was, in its view, exempt from disclosure under section 40(2) of FOIA. It also stated that it "seems unreasonable to deploy exhaustive effort proving a negative search outcome when the remote possibility of this information existing would remain subject to exemption."
21. Having reviewed the college's submission, the Commissioner is concerned that, at the time of the request, the college failed to conduct any searches for information falling within the scope of part 4. Even after being asked to rectify the matter by the Commissioner, it still does not appear to have carried out extensive searches to properly establish what information it does or does not hold.

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<sup>1</sup> More detail on the LIA and why public authorities may need to conduct one in cases such as this is provided in paragraphs 38 and 39 of this decision notice.

22. The Commissioner emphasises that there are two parts to the right of access under section 1(1); a right to be informed if information is or is not held and, if so, a right to be provided with that information.
23. Even if information is exempt from disclosure, the public authority will still normally need to confirm whether it is held or not in order to comply with section 1(1).
24. Furthermore, any assessment of whether the requested information is or is not exempt must be made on the information that is actually held and falls within the scope of the request, not a hypothetical assessment of whether information would be exempt if held.
25. This means that public authorities must first conduct searches to establish what, if any, information is actually held before considering whether any exemptions apply to that information.
26. In this case, the Commissioner considers that the college failed to comply with section 1 of FOIA in respect of part 4 of the request.

### **Section 40(2) – third party personal data**

27. Section 40(2) of FOIA allows a public authority to withhold information that constitutes the personal data of someone other than the requester, and if disclosing that information would contravene any of the data protection principles<sup>2</sup> set out under UK data protection law.
28. The Commissioner must therefore consider:
  - a) Whether the requested information is personal data and, if so;
  - b) Whether disclosing the information would constitute a contravention of data protection law.

### **Is the requested information personal data?**

29. Personal data is defined in Article 4 of the UK General Data Protection Regulation (UK GDPR) and means any information relating to an identified or identifiable natural person.

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<sup>2</sup> The data protection principles are set out in Article 5(1) of the UK General Data Protection Regulation and section 34(1) of the Data Protection Act 2018.

30. The two main elements of personal data are that it must relate to a natural person (i.e. a living individual), and that the person must be identifiable from the information (either directly or indirectly).
31. In this case, the withheld information in parts 2 and 4 of the request is the names of Academic Visitors (Postdoctoral Fellows) and Selection Panel representatives.
32. The Commissioner is therefore satisfied that this information is clearly personal data within the definition under section 3(2) of the DPA.
33. He has therefore gone on to consider whether its disclosure would contravene the data protection principles.

### **Would disclosure contravene the data protection principles?**

34. The fact that information constitutes personal data does not automatically exclude it from disclosure under FOIA. The second element of the test under section 40(2) is to determine whether disclosure would contravene any of the data protection principles.
35. The most relevant data protection principle in this case is the one under Article 5(1)(a) of the UK GDPR, which states:

*"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".*

36. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if doing so would be lawful, fair and transparent.
37. For disclosure to be "lawful", there must be a "lawful basis" for that processing. If there is no lawful basis under data protection law, the personal data cannot be disclosed. The available lawful bases for processing are listed in Article 6(1) of the UK GDPR. The disclosure must also be generally lawful (i.e. not in contravention of any other laws).
38. Of the six lawful bases listed under Article 6(1) of the UK GDPR, the ones most likely to apply to the disclosure of personal data under FOIA are those under Article 6(1)(a) and Article 6(1)(f):
  - (a) the individual to whom the requested information relates has given consent to the disclosure under FOIA, or
  - (f) the disclosure of the requested information is necessary for the purposes of legitimate interests pursued by the public authority or by a third party [e.g. the requester], except where such interests are overridden by the interests or

fundamental rights and freedoms of the individuals to whom the requested information relates.

As the individuals to whom the requested information relates have not consented to its disclosure in this case, the Commissioner has gone on to consider whether the "legitimate interests" lawful basis under Article 6(1)(f) would apply to the disclosure.

39. When considering whether Article 6(1)(f) applies to the disclosure of personal data, public authorities must consider:

- whether there is a legitimate interest being pursued,
- whether disclosure of the information is necessary to satisfy that interest, and
- whether the legitimate interest is overridden by the rights and freedoms of the individuals to whom the information relates.

The Commissioner refers to this assessment as a "Legitimate Interests Assessment" or "LIA".<sup>3</sup> The Commissioner has gone on to consider how this test applies in this case.

40. The complainant has argued that there is a legitimate interest in disclosing of the information requested in parts 2 and 4 of the request for the following reasons:

- "There is public interest in the relationship between Oxford as the world's best educational institution and organisations under the sway of the Chinese Communist Party.
- It is necessary to know which Chinese officials/academics have been given privileged status at Oxford. The public has the right to know whether are they [sic] nuclear scientists, advisers to President Xi (who studied at Tsinghua), foreign policy experts, IT researchers, or other. No explanation has been given of any harm which would result from the identification of these individuals.
- They are not lowly graded employees at the university who might expect their identities to remain confidential. They are visiting academics who do not have a reasonable expectation that their names will be treated as secrets. These individuals are involved in

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<sup>3</sup> For more information, see [the Commissioner's UK GDPR guidance on legitimate interests](#).

research at Oxford in a senior capacity and can expect to be identified.

- It is unacceptable to dismiss the salient point that the names of fellows and their roles are routinely disclosed by Oxford. This routine practice shows that it is not unlawful to make such information public.”

41. The Commissioner considers that the complainant is pursuing a legitimate interest in requesting the information in parts 2 and 4 of the request. He also considers that disclosure of the requested information is necessary to meet that legitimate interest.
42. The Commissioner notes that in its LIA, the college did not consider whether the complainant was pursuing a legitimate interest in asking for the disclosure of this information; only whether the college itself had a legitimate interest in processing the information. However, as explained in paragraph 38 of this decision notice, a legitimate interest can be one pursued by a third party (in this case, the complainant).
43. The Commissioner has therefore gone on to consider whether the legitimate interest being pursued by the complainant is overridden by the interests or fundamental rights and freedoms of the individuals to whom the information relates.
44. To appropriately balance the legitimate interests in disclosure against the data subjects’ interests or fundamental rights and freedoms, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect the information to be disclosed to the public under FOIA, or if such disclosure would cause unjustified harm, their interests or rights are likely to override the legitimate interests in disclosure.
45. In considering this balancing test, the Commissioner has taken into account the following factors:
  - the potential harm or distress that disclosure may cause;
  - whether the information is already in the public domain;
  - whether the information is already known to some individuals;
  - whether the individuals to whom the information relates expressed concern about its disclosure; and
  - the reasonable expectations of the individuals to whom the information relates.



46. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy and the purpose for which they provided their personal data. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.

47. The college has argued that the names of Academic Visitors (Postdoctoral Fellows) and Selection Panel representatives are a combination of private and professional pursuit. It stated that these "roles carry no legal, or financial accountability and are focused on the individuals' interests and personal area of study in a similar way to student. The individuals were temporary visitors to the College and not its employees."

48. The college stated that the individuals the information relates to:

"expect their information to be used for the purposes of administering the academic or research visitorship only.

The roles are insignificant in college hierarchy, not public facing and carry no legal or financial accountability. Therefore, individuals are unlikely to expect their information to be used for the purposes of Freedom of Information and unaware of the loss to privacy this brings. The FOI purpose is unlikely to be widely understood, especially by visitors from overseas territories not governed by UK law. In this case, the individuals will not expect their personal data to be in the public domain.

The college confirmed that it does not have the consent of the individuals concerned and have not sought their consent."

49. The college also argued that:

"Without the ability to validate the intentions and authenticity of a given FOI request, it is impossible to quantify the likelihood or impact upon members of the College whose privacy is undermined.

A requestor is under no duty of confidentiality, any release must be considered "disclosure to the world at large", thereby invalidating all control of the individuals.

The potential impact could be significant, personal data could be used for malicious purposes such as fraud or combined with other techniques such as 'social engineering' to facilitate

additional nefarious objectives, either against the individual or the College.

If a requestor were to hold extreme views in relation to political or sensitive areas of College research, disclosure may contribute to targeted campaigns against individuals - by extension the risk of physical harm.”

50. In conclusion the college accepted that it has a duty of transparency but that “the inability to quantify the likelihood and impact of harm to individuals, combined with an expectation of privacy and lack of knowledge of disclosure processes mean that Legitimate Interests is not a suitable lawful basis.”
51. The Commissioner notes, however, that the college’s LIA was completed prior to it identifying whether it held the specific information falling within the scope of part 4 of the request. In addition, it appears to the Commissioner that this assessment was done in respect of any personal data that the college holds in relation to its staff, rather than specifically with respect to the information requested (given that the college had not carried out sufficient searches to establish what information it held at this point).
52. The Commissioner understands that Academic Visitors (Postdoctoral Fellows) are leading experts employed by the college to carry out research in the college’s fields of interests. The college lists its academic visitors on its website and describes them as senior members of the college.
53. The Commissioner also understands the Selection Panel representatives are also senior members of the college.
54. The Commissioner does not agree with the college’s assessment that the individuals to whom the requested information relates are “insignificant”. As stated above, the Commissioner understands that visiting academics are leading experts and senior members of the college.
55. The Commissioner’s guidance on requests for personal data about public sector employees<sup>4</sup> states that it is “...reasonable to expect that you disclose more information about senior public authority employees than more junior ones. Senior employees should expect their posts to carry a greater level of accountability, since they are likely to be responsible for

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<sup>4</sup> ICO guidance: [Requests for personal data about authority employees](#)

major policy decisions and the expenditure of public funds.” As a general rule, more senior employees should therefore have a greater expectation that their personal data may be disclosed under FOIA when it relates to their work.

56. The Commissioner also notes that the college publishes the names of visiting academics on the “College Members” section of its website. The Commissioner does not therefore accept the college’s suggestion that visiting academics would not expect their identity, and the fact that they are a Visiting Academic at the college, to be made public.
57. With regards to the names of Selection Panel representatives, the Commissioner considers that its members are themselves senior academics at the college, and that their decisions on which Academic Visitors to select are major decisions of the type described in paragraph 53 of this notice.
58. In view of the above, the Commissioner does not consider that the individuals in question would have a reasonable expectation of privacy with regards to the fact that they are (or were) Academic Visitors to the college. Similarly, he does not consider that members of the panel selecting Academic Visitors would have a reasonable expectation that their membership of the panel would be kept private.
59. Whilst the Commissioner notes the arguments made by the college with regards to the fact that it is not possible to predict the intentions of all members of the public who may see the information in question, he does not accept that such a general argument is a valid reason to withhold information under FOIA. The Commissioner can see no reason in this case why the disclosure of the information in question would cause undue harm to the individuals to whom it relates, and the college has not provided any evidence to suggest that this would be the case with regards to this specific information.
60. The Commissioner is therefore satisfied that, in this case, the legitimate interests being pursued by the complainant are not overridden by the interests or fundamental rights or freedoms of the individuals to whom the requested information relates. He is therefore satisfied that the lawful basis under Article 6(1)(f) of the UK GDPR does apply to the disclosure of the information in parts 2 and 4 of the request, and that disclosure of this information would therefore be lawful.

### **Is disclosure fair and transparent?**

61. Even though disclosing the names of Academic Visitors (Postdoctoral Fellows) and the Selection Panel representatives under FOIA would be lawful, it is still necessary to show that disclosure would be fair and

transparent. In relation to fairness, the Commissioner considers that if the disclosure passes the legitimate interest test for lawful processing, it is highly likely that disclosure will be fair for the same reasons. The requirement for transparency is met because as a public authority, the college is subject to FOIA.

62. The Commissioner has therefore decided that the college has failed to demonstrate that the exemption at section 40(2) is engaged with respect to the names of the Academic Visitors (Postdoctoral Fellows) and the Selection Panel representatives.

## Right of appeal

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63. 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)

64. 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.
65. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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