

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

### **Decision notice**

**Date:** 1 May 2024

**Public Authority:** The Governing Body of the University of Oxford

**Address:** Wellington Square  
Oxford OX1 2JD

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

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1. The complainant has requested information about the election of former Vice-Chancellors and the current Vice-Chancellor. The University of Oxford ('the University') advised it didn't hold some information and disclosed relevant information with personal data redacted under section 40(2) of FOIA.
2. In the course of the Commissioner's investigation, the University advised that there was additional information that it hadn't been able to locate but that it was prepared to disclose some information to which it had previously applied section 40(2).
3. The Commissioner's decision is as follows:
  - The University is entitled to withhold personal data under section 40(2) of FOIA.
  - On the balance of probabilities, the University doesn't hold any further information within scope of the request.
  - The University didn't comply with sections 1(1) and 10(1) as it didn't communicate all the non-exempt information that it holds within the statutory period.
4. The Commissioner requires the University to 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 10, having redacted the personal data referred to.
5. The University 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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6. The complainant made the following information request to the University of Oxford ('the University') on 8 August 2023:

"The full contents of the final report and recommendations that the Nominating Committee for the Vice-Chancellorship delivered to Council in regards to the recommendations (and subsequent elections) of:

  - \*\*John Hood
  - \*\*Andrew Hamilton
  - \*\*Lousie Richardson
  - \*\*Irene Tracey [the current Vice-Chancellor]
7. On 7 September 2023, the University advised that it didn't hold relevant information about John Hood. It disclosed information it did hold with personal data redacted under section 40(2) of FOIA. The disclosed information comprises Council papers which, from dates and those named in the papers, appear to concern the final appointment of Andrew Hamilton, Louise Richardson, and Irene Tracey
8. The complainant requested an internal review on 31 October 2023. The University didn't provide a review and their complaint to the Commissioner was accepted without a review having been carried out.
9. The complainant considered that the University would hold information about John Hood and disputed the University's reliance on section 40(2) to withhold information within scope of their request.
10. In its submission to the Commissioner the University advised that, on reconsideration, it could disclose the majority of Irene Tracey's CV with a small section redacted which relates to her personal life rather than her professional experience. The University also considered that the

names of the Committee members who considered the appointment of Professor Tracey can be disclosed, as the Committee's membership is now available on the University's website.

11. The University has also advised that it has now found that, as well as information about John Hood, it can't locate Louise Richardson's CV or proposed terms and conditions. It said it considers it's very unlikely to hold this information but to confirm definitively whether it does would exceed the cost limit under section 12 of FOIA.

## **Reasons for decision**

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12. This reasoning will first consider whether the University is entitled to withhold personal data under section 40(2) of FOIA. It will also consider whether, on the balance of probabilities, the University holds information about John Hood and further information about Louise Richardson, and related procedural matters. The Commissioner will consider the internal review under 'Other matters.'

## **Section 40 – personal data**

13. In its response to the request, the University advised that under section 40(2) it had redacted the following from the information it disclosed:
  - the names of staff members and third parties, and any other information that could be used to identify them, except where the information relates to University staff in senior, public facing roles; and
  - information included in the papers which had originally been submitted by the proposed appointees as part of their applications, or which related to the proposed terms of their appointments.
14. Section 40(2) of FOIA provides that information is exempt from disclosure if it's the personal data of an individual other than the applicant and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
15. The relevant condition here 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 ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').

16. In this case, the complainant has requested information associated with the election of certain individuals to the role of Vice-Chancellor. The University has redacted relevant information concerning those individuals from the papers it disclosed and from the information it now intends to disclose; namely information those individuals submitted as part of their applications, information about the terms of their appointments and information about their personal life. The University confirmed in its submission to the Commissioner that it continues to withhold the names of the nominating Committee members for previous Vice-Chancellors and the names of members of University staff. These individuals – the Vice-Chancellors, Committee members and members of University staff - are the 'data subjects.'
17. To confirm, the information being withheld is the names of certain members of University staff, the names of Committee members and information about previous Vice-Chancellors and the current Vice-Chancellor, who've been named in the request.
18. The Commissioner is satisfied, first, that the redacted information is the data subjects' personal data – they can be identified from the information and the information relates to them.
19. The Commissioner has next considered whether disclosing the personal data would contravene one of the DP principles. The most relevant DP principle in this case is principle 5(1)(a) of the UK GDPR. This says that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
20. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.
21. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that "processing shall be lawful only if and to the extent that at least one of the" lawful bases for processing listed in the Article applies.
22. 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."
23. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it's necessary to

consider a three-part test: the legitimate interest test, the necessity test, and the balancing test.

24. First, the legitimate interest test. The Commissioner notes that the complainant has an interest in this particular information. He doesn't know why the complainant has this interest but nonetheless accepts that it's a legitimate interest for them to have. There's also a general legitimate interest in public authorities such as the University being open and transparent.
25. The Commissioner has gone on to consider the necessity test; whether it's necessary to disclose the information in order to meet the complainant's legitimate interests and the general interest in transparency.
26. The Commissioner considers that the general interest in transparency has been met to an adequate degree through the information the University has disclosed and intends to disclose. The disclosed information should also satisfy to an adequate degree the "historical considerations" in which the complainant's interested. However, disclosing the withheld information would be necessary to fully address the complainant's legitimate interests.
27. The Commissioner has therefore balanced the complainant's legitimate interest against the data subjects' fundamental rights and freedoms.
28. In considering this balancing test, the Commissioner takes 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 individual expressed concern to the disclosure; and
  - the reasonable expectations of the individual.
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29. In the Commissioner's view, a key issue is whether the data subjects have a reasonable expectation that their information won't be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
30. It's also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
31. The Commissioner has first considered the members of University staff. He is satisfied that the members of University staff whose names the University has redacted would reasonably expect that their personal

data wouldn't be disclosed to the world at large under FOIA. This is because those staff aren't in senior or public facing roles. As such disclosing their personal data would cause them distress.

32. The Commissioner has next considered the members of Committees associated with previous Vice-Chancellors' appointments, whose names have been redacted.
33. In their request for an internal review, the complainant noted that the University had removed the names of "very senior individuals" such as Heads of Colleges and Proctors. The complainant considered that these people would be aware of their seniority and their role in the University and would have "tuned their privacy expectations accordingly."
34. The complainant also queried whether the members of Committees would be affiliated to "the Congregation", which has a public registry similar to Regent House in the University of Cambridge. The complainant speculated that part of these Committees was formed through a self-nomination and public election process. They considered that those individuals would be well-aware of the fact that their identity might be disclosed. The complainant said their identity had probably already been disclosed in the Oxford Gazette. As such, they considered there was no need for the University's "overzealous redaction."
35. In its submission to the Commissioner the University has confirmed that the names of the previous nominating Committee members should be withheld. It says that the most appropriate lawful basis for processing their personal data by disclosing it in response to this request would be consent. Whilst it didn't explicitly seek their consent when processing the request, the University says that it doesn't make public the names of Committee members and it would be contrary to the members' legitimate expectations for their names to be made public by other means. (The University also says that consulting four separate sets of Committee members, many of whom don't work for the University, would also significantly increase the burden imposed by the request.)
36. In its submission the University goes on to say that, in its view, there doesn't appear to be any public interest in disclosing the names of these Committee members. It accepts that there's a public interest in transparency around the University's decision-making processes, especially where this relates to staff as senior as the Vice-Chancellor, whose salaries will be comparatively high. However, the University notes that this process is displayed in the papers disclosed in the response, and disclosing the Committee members' names isn't necessary to achieve this interest in transparency. It therefore doesn't consider that a legitimate interest in processing their personal data in this way can be established

37. The University has noted the complainant's point about members of the Congregation. It says that it's correct that members of the University's Congregation are publicly available. However, their past membership of University Committees isn't published, and in any case, not all Committee members are members of Congregation.
38. The University has also noted that the members of Council are made public on its website, so the University is transparent as to the identity of those involved in the final appointment decisions.
39. The Commissioner agrees with the University that the Committee members whose names the University is continuing to withhold would reasonably expect that their personal data wouldn't be disclosed. As such disclosing their personal data would cause them distress. The Commissioner also agrees that the information that's been disclosed provides a sufficient level of transparency about the appointment process.
40. Moving on to the individuals named in the request about whom the University holds information, the complainant considered that this was pushing section 40(2) too far. This was because first, the information concerned how public funds are used and second, it was historical data about factual agreements that are now in the past. There were no controversies or live issues but, rather, historical considerations.
41. Regarding their CVs or statements, the complainant said this information is obviously not "special category personal data", "criminal data", and they aren't children. They're very senior individuals that "should have known better when applying and becoming short listed to be the head of such a big University, that their credentials would be under scrutiny." The complainant said their CVs or credentials are also likely to be in the public domain already.
42. The complainant concluded by stating that the University receives public funds. The individuals are very senior - the face of Oxford - which would mean they wouldn't be harmed or distressed and, in the complainant's view it's reasonable that "these things" would be scrutinised.
43. In its response to the request the University advised that the information being withheld reveals information about the proposed appointees which isn't in the public domain, and they wouldn't expect it to be disclosed to the world at large under FOIA. Some of the information in Louise Richardson's CV is also information of a more personal nature in that it relates to her private rather than professional life.

44. The Commissioner has taken account of the high-profile nature of the role of Vice Chancellor. However, he isn't persuaded that this would lead those who have been or are in that role to reasonably expect that their personal data – such as one former Vice Chancellor's CV - would be put into the public domain. If, as the complainant has suggested, the CVs were already in the public domain, they wouldn't have had to request them from the University under FOIA.
45. The University has disclosed, and intends to disclose, a significant amount of the related information it holds, and the Commissioner considers that demonstrates an adequate level of transparency about the relevant appointment processes. Moreover, there's no suggestion or evidence of any impropriety in the process through which those individuals were appointed as Vice Chancellors, which might have favoured disclosing the information. The complainant has themselves noted that there were no "controversies" about the appointments. The Commissioner is therefore satisfied that disclosing the withheld information about the Vice Chancellors that the University holds would cause those individuals distress.
46. To summarise, the Commissioner is satisfied that there's insufficient legitimate interest to outweigh the fundamental rights and freedoms of the data subjects ie the members of University staff, Committee members and Vice Chancellors. The Commissioner therefore considers that there's no Article 6 basis for processing and so disclosing that information wouldn't be lawful. As such the University is therefore entitled to withhold that information under section 40(2), by way of section 40(3A)(a).

## **Procedural matters**

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### **Section 1 – right of access to information held by public authorities / Section 10 – time for compliance**

47. The University advised the complainant that it didn't hold any information about John Hood, who was Vice-Chancellor of the University from 2005 to 2009. It's now advised it can't locate certain information about Louise Richardson, who was Vice-Chancellor from 2016 to 2022.
48. Section 1(1)(a) of FOIA places an obligation on a public authority to confirm whether it hold information that an applicant has requested. Under section 1(1)(b) a public authority must communicate information to an applicant if it's held and isn't exempt information.



49. Under section 10(1) a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
50. The University indicated that it considered section 12(2) of FOIA may apply regarding the information about John Hood and Louise Richardson. Section 12(2) removes the obligation under section 1(1)(a) if the cost of simply confirming whether the information is held would exceed the appropriate cost limit.
51. However, the Commissioner doesn't consider section 12(2) is relevant here as the University has been able to confirm that it **does** hold information within scope of the request, the information that's been discussed under the section 40 analysis. As such, the Commissioner will consider whether, on the balance of probabilities, the University holds any further information that's relevant to the request.
52. In its submission to the Commissioner, the University confirmed that it had stated that it didn't hold the Council papers relating to appointment of John Hood as Vice-Chancellor [or further information relating to Louise Richardson] and that it had carried out reasonable searches to determine whether this information is held.
53. The University explained that its Council is supported by a central department, the Planning and Council Secretariat (PACS), which maintains paper and electronic records of items the Council considered at its meetings. PACS searched its locally held records for any papers relating to John Hood's and Louise Richardson's appointment, and its search uncovered no relevant papers in these records. In addition to PACS's search, the University Archives also conducted a search of the Council papers deposited in the archives, and likewise found no papers relating to this appointment.
54. The Commissioner considers that the University has carried out adequate searches for relevant information in the most appropriate areas of the University, including the PACS department and the University's archives. These appear to the Commissioner to be the areas most likely to hold information about the appointment of the University's Vice-Chancellors. Furthermore, the University hasn't indicated that it's found any of the information it has located outside of the PACS, elsewhere around the University.

55. The Commissioner accepts that, on the balance of probabilities, the University holds no further information within scope of the request.
56. However, in this case, the University didn't communicate the information related to Irene Tracey within the statutory period. It therefore didn't fully comply with section 1(1) and section 10(1) of FOIA.

### **Other matters**

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57. Provision of an internal review isn't a requirement of FOIA but is a matter of good practice. In most cases, a public authority should provide a review within 20 working days of the request for one. In this case, in its response to the request the University invited the complainant to request a review. They did so on 31 October 2023, but the University hadn't provided one at the point of the complaint to the Commissioner on 20 December 2023. The Commissioner has recorded this oversight for monitoring purposes.

## Right of appeal

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58. 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)

59. 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.
60. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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