

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

### **Decision notice**

**Date:** 15 July 2024

**Public Authority:** The Governing Body of the Courtauld Institute of Art

**Address:** Somerset House  
Strand  
London WC2R 0RN

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

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1. The Commissioner's decision is that the Courtauld Institute of Art ('the Institute') correctly applied section 41(1) of FOIA to the requested guidance about handling FOIA requests about University & Colleges Employers Association (UCEA). This is because the information was provided to the Institute in confidence. However, the Institute didn't comply with section 17(1) of FOIA as it didn't provide the complainant with a refusal notice within the statutory time limit.
2. It's not necessary for the Institute to take any corrective steps.

### **Request and response**

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3. The complainant made the following information request to the Institute on 21 October 2023:

"Can you please, under the FOI 2000 regime, provide me with this document: "The UCEA Guidance on FOI requests for UCEA documents"

For the avoidance of doubt, I make reference to the Guide mentioned in <https://www.ucea.ac.uk/about-us/members/conditions-of-membership/>."

4. The Institute provided a refusal notice on 15 December 2023. It relied on section 41(1) of FOIA to withhold the information and maintained that position following its internal review.

## Reasons for decision

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5. This reasoning covers the Institute's application of section 41(1) of FOIA to the complainant's request. It also considers the timeliness of the Institute's refusal.
6. Section 41(1) of FOIA states that information is exempt from disclosure if (a) the information was obtained by the public authority from any other person and (b) disclosing the information to the public would constitute an actionable breach of confidence.
7. The Commissioner has first considered section 41(1)(a). The withheld information is guidance produced by UCEA. UCEA describes itself as the 'leading voice on employment and reward matters in the UK HE sector<sup>1</sup>.' It provides advice and support to its higher education membership institutions.
8. The requested guidance originated from UCEA and was provided to the Institute as a membership organisation; another person (UCEA) therefore provided the information to the Institute.
9. The Commissioner has gone on to consider section 41(1)(b) and whether disclosing the information to the public would constitute an actionable breach of confidence.
10. In order for disclosure to represent a breach of confidence, the information:
  - must have the necessary quality of confidence
  - must have been imparted in circumstances importing an obligation of confidence; and
  - must be an unauthorised use of the information to the detriment of either the party which provided it or any other party.
11. In its submission to the Commissioner the Institute says that it believes the information requested has the necessary quality of confidence. It says that it's not aware that the information is available in the public

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<sup>1</sup> <https://www.ucea.ac.uk/>

domain in an easily accessible way that wouldn't require specialist knowledge or persistent efforts. It also says that the information, as the Institute understand it, includes legal advice provided to UCEA which it has chosen to share with paying members of its organisation. It's not publicly available on the UCEA website.

12. The Institute has gone on to explain that it's a paying member of UCEA. As such, it's bound by the terms and conditions of its membership which explicitly preclude it from sharing UCEA information.
13. The terms of its contract with UCEA require the Institute to consult with UCEA in the event of requests relating to its information. The Institute considers that it's clear that any unauthorised disclosure by it would be an actionable breach of confidence.
14. Finally, the Institute says that, in the context of the terms and conditions of its agreement, it approached UCEA to ask if it would consent to releasing the information given, that the Commissioner had asked the Institute to review its response. UCEA confirmed that it doesn't agree to disclosure in this instance.
15. The Commissioner has reviewed the withheld information in the course of dealing with a complaint about a request for the same information that the complainant sent to a different higher education provider<sup>2</sup>. He noted then the guidance is marked 'confidential.' The Commissioner is also satisfied that the information isn't trivial and isn't in the public domain. If it were, the complainant wouldn't need to submit requests for it under FOIA. Finally, he notes that, as in that earlier case, the Institute in this case consulted the UCEA about disclosing this information in response to the request. UCEA expressly disagreed with disclosing the guidance. The Commissioner is therefore satisfied that the information both has the necessary quality of confidence and was imparted in circumstances importing an obligation of confidence.
16. Lastly, the Commissioner has considered
17. The Commissioner notes that the disputed information is guidance about handling FOIA requests about UCEA. It's not advice on education, employment or union matters but it's still information the UCEA has specifically forbidden to be disclosed. Even though the final decision to disclose information under FOIA is the Institute's, not UCEA's, the

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<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2024/4030182/ic-292127-c0y9.pdf>

Commissioner accepts that disclosing the guidance would cause the Institute detriment. This is because disclosure would damage its membership of UCEA and the relationship of trust it has with UCEA.

18. Although section 41 is an absolute exemption, it's accepted that if there's an overriding public interest in disclosure, this can be used as a defence against any breach of confidentiality that might be brought against a public authority disclosing information under FOIA. In other words, the Commissioner must balance the public interest in the information with the inherent public interest in preserving the principle of confidentiality.
19. The Commissioner understands that the complainant has a specific interest in UCEA, its role and its engagement with higher education providers. This is a valid interest for them to have. In their complaint to the Commissioner, the complainant discusses concerns that they have about UCEA's FOIA guidance and how they consider UCEA, and higher education providers are applying it. However, the Commissioner notes that they haven't seen the guidance themselves.
20. The Commissioner can't identify any public interest in the requested information, beyond the general public interest in a public authority being transparent and accountable by complying with requests that it receives under FOIA. The public interest in UCEA, the Institute and FOIA is satisfactorily met through the information UCEA and the Institute publish about themselves on their websites and the published information and guidance about FOIA generally. On this occasion therefore, the Commissioner is satisfied that section 41(1) of FOIA is engaged, and the public interest lies in preserving the principle of confidentiality.

## **Procedural matters**

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21. In respect of any information that a public authority considers is exempt information, under section 17(1) of FOIA it must issue the applicant with a refusal notice promptly and within 20 working days following the date of receipt of the request.
22. In this case, the complainant submitted their request on 21 October 2023 and the Institute didn't provide a refusal notice until 15 December 2023. The Institute therefore didn't comply with section 17(1).

## **Right of appeal**

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23. 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)

24. 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.
25. 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**