

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

### **Decision notice**

**Date:** 3 November 2015

**Public Authority:** Imperial College London  
**Address:** South Kensington Campus  
London  
SW7 2AZ

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

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1. The complainant has requested the college to disclose which hours there is at least one member of staff on duty at the Hammersmith animal research facility. The college responded refusing to disclose the requested information under section 38 of the FOIA.
2. The Commissioner's decision is that the college applied section 38 of the FOIA correctly in this case and the public interest in favour of disclosure is outweighed by the public interest in maintaining this exemption.
3. The Commissioner therefore does not require any further action to be taken.

#### **Request and response**

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4. On 2 December 2014, the complainant wrote to the college and requested information in the following terms:  
  
"1. Whether there is now at least one member of care staff on duty at the site of Biological Services Unit, Du Cane Road, Hammersmith all the time (i.e. 24 hours a day, 7 days a week).  
  
2. If not, (i) during which hours there is at least one member of care staff on duty at the Hammersmith site; and (ii) what criteria are applied in deciding on care staff cover outside normal business hours (disclosing an relevant document)

3. (i) Since the BUAV investigation, whether the Home Office, by conditions attached to licenses or otherwise , has imposed any new requirements on license holders with regard to staff cover; and (ii) if so, what they are (disclosing any relevant document)“
5. The college responded on 23 December 2014. The college provided the requested information with the exception of question 2(i) of the request. It informed the complainant that it considered this information is exempt from disclosure under section 38 of the FOIA.
6. The complainant requested an internal review on 19 January 2015.
7. The college carried out an internal review and notified the complainant of its findings on 4 March 2014. The college upheld its application of section 38 of the FOIA and confirmed again that it was unwilling to disclose the information falling within the scope of question 2(i) of the request.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 22 May 2015 to complain about the way his request for information had been handled. The complainant stated that he disagreed with the college's application of section 38 of the FOIA in this case and believes the requested information should be disclosed.
9. The Commissioner's investigation has focussed on question 2(i) of the request only and the college's application of section 38 of the FOIA.

### **Background**

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10. It is understood that an animal campaign group infiltrated the Hammersmith site in 2012 by obtaining employment from the college for several months. This person closely watched the academic and support staff at the site for this period and assisted in producing a dossier in 2013 which was released to national newspapers making allegations of incompetence and cruelty and neglect. One issue that was raised was the care of animals outside of opening hours (evenings, weekends and public holidays).
11. The college conducted its own investigation and then a further two investigations followed that. One was conducted by Professor Steven Brown who's findings were published in December 2013 (Brown Inquiry) and the other was carried out by the Home Office, which regulates the

use of animals in scientific research under the Animals (Scientific Procedures) Act 1986 (ASPA) and this was published in October 2014.

12. The Brown Inquiry can be accessed via this link:

<http://brownreport.info/>

This made a series of recommendations relevant to not only the college but to other organisations using animals for research.

13. The Home Office's findings can be accessed via the following link:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/360468/ASRU - 25 09 14 v3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360468/ASRU_-_25_09_14_v3.pdf)

### **Reasons for decision**

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14. Section 38 of FOIA states that information is exempt if its disclosure would, or would be likely, to

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.

15. Section 38 of the FOIA is also a qualified exemption. So, in addition to demonstrating that disclosure would or would be likely to endanger the physical or mental health of an individual or endanger the safety of an individual, the college must consider the public interest arguments for and against disclosure and demonstrate, in this case, that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining this exemption.

16. The college has requested that the arguments presented in support of its application of section 38 of the FOIA and the public interest test be treated as confidential. As a result a confidential annex accompanies this notice outlining the detail of the Commissioner's decision in this case.

17. The Commissioner can only say in the main body of this notice that he accepts section 38 of the FOIA applies in this case and that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption.

## Right of appeal

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18. 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

19. 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.
20. 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** .....

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**