

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

### **Decision notice**

**Date:** 1 July 2018

**Public Authority:** The Council of the University of Cambridge  
**Address:** University Offices  
The Old Schools  
Trinity Lane  
Cambridge CB2 1TN

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

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1. The complainant has requested particular communications and reports from the University of Cambridge ('the University'). The University considers the information to be exempt from disclosure under section 31(1) subsections (a), (b) and (c) (law enforcement) and section 40(2) (personal data).
2. The Commissioner's decision is as follows:
  - The information is exempt from disclosure under section 31(1) subsections (a), (b) and (c) and the public interest favours maintaining these exemptions.
3. The Commissioner does not require the University to take any remedial steps.

#### **Background**

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4. The Commissioner notes that this case relates to a student who was murdered in February 2016. A professor named in the request was their doctoral supervisor. Although the circumstances of the death are in the public domain, the Commissioner understands that the formal police

investigations are ongoing and therefore the Commissioner has redacted certain information from the request reproduced in this decision notice.

## Request and response

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5. On 20 February 2018 the complainant wrote to the University and requested information in the following terms:

*"1) All electronic or paper communication between [redacted name of supervisor] and [redacted name of student] that the University of Cambridge so far found and/or gave to the British or [redacted name of country] authorities;*

*2) Any report or paper that [redacted name of student] sent to, or filed with [redacted name of supervisor]..."*

6. The University responded on 27 November 2018. It withheld the requested information under section 31(1) and section 40(2) of the FOIA. It confirmed that it considered that the public interest favoured maintaining the section 31 exemption.
7. The University provided an internal review on 21 December 2018. It maintained its position.

## Scope of the case

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8. The complainant contacted the Commissioner on 23 December 2018 to complain about the way his request for information had been handled.
9. The Commissioner's investigation has focussed on whether the University can rely on section 31(1) subsections (a), (b) and (c) and/or section 40(2) of the FOIA to withhold the information the complainant has requested.

## Reasons for decision

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### Section 31 – law enforcement

10. In its submission to the Commissioner the University has confirmed that it considers that all of the information that it holds that is relevant to the request is exempt under section 31(1) subsections (a), (b) and (c) of the FOIA.

11. Under subsection 31(1)(a) information is exempt information if its disclosure would, or would be likely to, prejudice the prevention or detection of crime. Under subsection 31(1)(b) information is exempt information if its disclosure would, or would be likely to, prejudice the apprehension or prosecution of offenders. Subsection 31(1)(c) is similar and concerns the administration of justice.
12. Section 31 is subject to the public interest test.
13. In its submission the University has acknowledged that the circumstances of the student's death and the police investigations are in the public domain. It has provided the Commissioner with a link to a published news article which provides background and a summary of the situation as of January 2019.
14. The University says it understands that another EU member authorities' investigations are ongoing and that evidence is still being collated and reviewed. It has confirmed, for the avoidance of doubt, that the University supplied most of the information within the scope of the request to the Home Office's UK Central Authority - International Criminality Unit (UKCA) - in summer 2018 following the receipt of a formal European Investigation Order (EIO); the UKCA subsequently passed this information to the separate EU member's authorities.
15. The exception to this concerns the correspondence between the two parties named in the request that pre-dates the period covered by the EIO. The University has provided the Commissioner with all the information it is withholding.
16. The University's submission has next addressed the nature of the prejudice that it says would be likely to be caused by disclosing the information, and the causal link between disclosure and that ensuing prejudice. In the University's view, as most of the information was requested and supplied to the EU member's authorities following a formal EIO, and as the investigation is ongoing, and as multiple lines of enquiry remain open, disclosing the information into the public domain self-evidently would be likely to prejudice the international efforts to detect the criminal or criminals in question, to apprehend and prosecute them, and to administer the subsequent legal processes in the relevant jurisdiction. Depending on the laws of the country in which any prosecution might take place, detection, apprehension, prosecution and subsequent legal processes could, according to the University, be directly prejudiced by the premature public dissemination of any information relevant to the case.
17. In correspondence to the Commissioner the complainant has explained why he disagrees with the University's application of section 31(1) to

the information he has requested. He has argued that a particular individual is not a suspect in this case and so none of the requested information has any bearing into the police investigation. He considers that the information could show procedures that were followed and the attitudes and concerns of the individual in question. The complainant considers that, again, this would not have an impact on the ongoing police investigation.

18. In order for a prejudice based exemption, such as section 31(1), to be engaged the Commissioner considers that three criteria must be met:
  - First, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption
  - Second, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
  - Third, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. The Commissioner considers that the higher threshold places a stronger evidential burden on a public authority to discharge. The chances of the prejudice occurring should be more probable than not.
19. From the University's submission and the wider circumstances of this case, the Commissioner is satisfied that the harm that the University alleges would be likely to occur through disclosing the requested information is relevant to the three exemptions cited: detection of a crime; the apprehension and prosecution of offenders and the administration of justice.
20. The Commissioner is also satisfied that a causal relationship exists between releasing into the public domain any information that may be relevant to a criminal investigation– in an uncontrolled way under the FOIA – and resulting prejudice to that investigation. (This applies both to the information the University has provided to UKCA and the requested information that it holds but which it has not provided to

UKCA. This is because the University may be required to provide that information in the future.) The criminal investigation in question is ongoing and possible consequences of disclosure are given below, in the public interest considerations. Given the circumstances, the Commissioner is satisfied that the prejudice being claimed is not trivial or insignificant.

21. The University has stated that disclosing the withheld information *would be likely* to cause prejudice a particular law enforcement process, rather than *would* cause. In the case of John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005) the First Tier Tribunal (Information Rights) confirmed that, when determining whether prejudice would be likely, the test to apply is that "*the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk.*" In other words, the risk of prejudice need not be more likely than not, but must be substantially more than remote. The Commissioner accepts that, in this case, the risk that disclosing the withheld information would be likely to prejudice the detection of a crime, the apprehension and prosecution of an offender and the administration of justice is more than a remote risk.
22. The Commissioner finds that the prejudice test at paragraph 18 has been satisfied in the circumstances of this case and consequently the exemptions at section 31(1) subsections (a), (b) and (c) are engaged. She has gone on to consider the public interest test.

### **Public interest test**

#### *Public interest in disclosing the information*

23. The University acknowledges that there has been substantial media interest in the circumstances surrounding the student's disappearance and death. It says it recognises that disclosure would contribute to those public interest discussions about the case as well as wider debates about university students pursuing fieldwork overseas.

#### *Public interest in maintaining the exemptions*

24. The University argues that it is in the overriding public interest for the relevant authorities to be able to use the information in question to detect the offenders for this specific crime, to apprehend them and to bring them to justice. In order to do this, they need a 'safe space' to pursue lines of enquiry without the likely distraction, hindrance or prejudice caused by public or media discussions of the information.
25. The University also argues that it is a realistic possibility that disclosing some of the requested information, in revealing pertinent aspects of the student's interests and activities, could alert those responsible for his

death to some of the likely lines of enquiry being pursued and so enable them to prepare for questioning and/or conceal their activities.

*Balance of the public interest*

26. The Commissioner understands that the complainant is a journalist and, as such, she understands why the requested information is of interest in him. She also notes that there is sufficient wider public interest in the investigation in question – and the wider issues it may raise - to warrant media attention.
27. However, the Commissioner considers that the University's points about the need for a 'safe space', the avoidance of any hindrance and the possibility of alerting offenders to possible lines of enquiry are realistic concerns to have. She disagrees with the complainant's arguments at paragraph 17 in that regard. The Commissioner is entirely satisfied that there is overwhelming public interest in the relevant authorities being able to carry out their criminal investigation without that investigation potentially being prejudiced in the above ways through disclosure of the requested information.
28. Because the Commissioner has decided that section 31(1) subsections (a), (b) and (c) are engaged, and that the public interest favours maintaining these exemptions, it has not been necessary to consider the section 40(2) exemption that the University is also relying on.

## **Right of appeal**

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29. 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)

30. 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.
31. 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**

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