

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 July 2020

**Public Authority:** The Council of the London School of Economics and Political Science

**Address:** Houghton Street  
London  
WC2A 2AE

### Decision (including any steps ordered)

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1. The complainant made two requests for information about the award of a PhD to Taiwanese President Tsai Ing-wen. The Council of the London School of Economics and Political Science ("the LSE") refused both requests as vexatious.
2. The Commissioner's decision is that the LSE has failed to demonstrate that the requests are vexatious and is therefore not entitled to rely on section 14(1) of the FOIA to refuse either request.
3. The Commissioner requires the LSE to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response, to both requests, that does not rely on section 14(1) of the FOIA.
4. The LSE must take these steps within 35 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.

### Background

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5. In 1983, the LSE maintains that it awarded a doctorate to Tsai Ing-wen. However, it is unable to locate the original copy of her thesis, titled "*Unfair trade practices and safeguard actions*". At the time, because the LSE did not have degree-awarding powers, degrees had to be conferred by the University of London and, somewhere between the thesis being

transferred to the University of London and stored in its library, it went missing. Whilst the original thesis cannot be located, President Tsai's name appears on the contemporaneous pass list for 1984. The original examination record has been retained by the University of London and the title of the thesis appears in an index, published in 1985, by the Index of Advanced Legal Studies (IALS).

6. Ms Tsai was elected President of Taiwan (also known as the Republic of China) in 2016 and re-elected to that role in 2019.
7. In June 2019, President Tsai donated her personal copy of her thesis (it is common for PhD students to retain a bound copy of their thesis as a memento) to the LSE library. A note in the library's collection records the fact that the thesis is not the version that was assessed.

## **Request and response**

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8. On 7 October 2019, the complainant wrote to the LSE and made a request for information about the acquisition of President Tsai's personal copy of her thesis ("Request One"). Given the length of the request, the Commissioner does not consider it necessary or desirable to reproduce that here, but will include it in an annex provided to both parties.
9. The LSE responded to the request on 4 November 2019. It provided some information.
10. On 18 November 2019, the complainant wrote to the LSE. She contested the authenticity of some of the information the LSE had provide and contested the LSE's position that it had provided all the information it held.
11. On the same day, the complainant also submitted a second request ("Request Two") for information regarding President Tsai's examination and student records. Once again, this request contained multiple parts and is recorded in the annex.
12. On 10 December 2019, the LSE responded to the complainant. It stated that it had refused her request as vexatious – but did not identify which request it was referring to.
13. The complainant sought a further internal review. The LSE completed an internal review on 6 February 2020 in respect of Request Two, it upheld its original position and relied on section 14(1) to refuse the request.

## Scope of the case

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14. The complainant contacted the Commissioner on 19 December 2019 to complain about the way Request One had been handled. She submitted a further complaint on 2 April 2020 about the way Request Two had been handled.
15. Given that the two requests had been made around the same time and, it appeared, had both been refused as vexatious, the Commissioner considered that it would be beneficial to all concerned to deal with both complaints simultaneously. When commencing her investigation, she wrote to the LSE to ask it to set out why it considered the requests were vexatious.
16. The LSE responded to say that its correspondence of 10 December 2019 was intended to apply to Request Two only and was not an internal review of Request One. It believed that it had provided all the information it held in respect of Request One and asked the Commissioner to explain her understanding of the timetable of both requests.
17. The Commissioner drew the LSE's attention to the complainant's correspondence of 18 November 2019. She noted that the complainant had clearly expressed dissatisfaction with the response she had been provided with and that, if the LSE had only intended its 10 December correspondence to apply to Request Two, then it still needed to reconsider its approach to Request One. The Commissioner therefore ask the LSE to reconsider its response and either cite an exemption or explain how it had concluded that it held no further information.
18. The LSE responded on 2 July 2020 to note that the complainant's correspondence of 18 November had been erroneously deleted. It noted that it had been under a severe burden at the time and the correspondence had been mistakenly considered as duplicate. Having reconsidered the matter, it now considered that Request One was also vexatious – although it noted that it might also have considered section 12 (cost of compliance would exceed the appropriate limit).
19. Although the LSE did mention both section 12 and section 14 in relation to Request One, the Commissioner has not considered section 12 in this decision notice. Given that, when she concludes that a request does not engage section 14(1), her remedial step is to order a fresh response – in which case a public authority may rely on any other exemption (including section 12) – prolonging the complaint in order to seek further submissions would have been unfair to the complainant.

20. The Commissioner has therefore only considered whether the requests were vexatious.

## Reasons for decision

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### Section 14 - Vexatious

21. Section 1(1) of the FOIA states that:

*Any person making a request for information to a public authority is entitled –*

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

22. Section 14 of the FOIA states that:

*Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.*

23. The term “vexatious” is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that “vexatious” could be defined as the “manifestly unjustified, inappropriate or improper use of a formal procedure”. The Upper Tribunal’s approach in this case was subsequently upheld in the Court of Appeal.
24. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
25. *Dransfield* also considered four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained the importance of: “...adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.” (paragraph 45).

26. The Commissioner has published guidance on dealing with vexatious requests<sup>1</sup>, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
27. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: *"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies"*.
28. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
29. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states: *"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress"*.

#### *The complainant's view*

30. The complainant did not believe her requests were vexatious because she argued that she was investigating matters of considerable importance. She pointed out that President Tsai is a high profile figure: one who makes frequent reference to her doctorate on her social media channels and in her presidential biography. Because "concerns" had been raised about the validity of that doctorate, the complainant argued that there was thus a strong public interest in access to information which might shed light on its validity or otherwise.
31. The complainant further pointed to what she believed to be inconsistencies between the LSE's recent published statements, the original records that had been disclosed and information placed into the public domain by President Tsai herself, arguing that such "confusion" needed clearing up. She also pointed out that President Tsai should not be allowed to disclose only information which painted a favourable picture of herself.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

32. Furthermore, the complainant pointed to the award of an "Aegrotat" degree<sup>2</sup> to the son of the then-president of Sri Lanka and implied that a similar situation may have occurred in the case of President Tsai.
33. The complainant was clearly aware that other individuals had submitted requests about the same matter, but she did not indicate explicitly whether or not she was working with any other individuals. The Commissioner notes however, that there was no obligation on the complainant to provide this information.

*The LSE's position*

34. In explaining why it believed the requests were vexatious, the LSE drew the Commissioner's attention to the high number of requests and enquiries it received about this particular issue around the time of the complainant's requests.
35. When asked to quantify the volume of correspondence received, the LSE responded thus:

*"As at 29/11/2019, the number of enquiries was:*

*Ethics Manager – 7 direct enquiries, 3 to the Ethics box*

*LSE Archivist – 9 direct enquiries, 86 separate emails*

*Head of Legal – 4 enquiries, 8 emails*

*Media Relations – 344 separate emails*

*Law – about a dozen altogether, with two more since November.*

*[Head of Library] and Library – around 60 direct enquiries, generating around 590+.*

*FoI requests – 7, with 3 more received in December and the [Legal] request received in January."*

36. The LSE noted that, in an effort to improve transparency and reduce the number of enquiries, it had made a great deal of information available

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<sup>2</sup> An aegrotat degree can be awarded where a student has been unable to complete their course of studies but where the awarding institution nevertheless believed that, had they been able to complete their studies, they would have met the standard for a degree. They are now rarely awarded in the UK.

already – although it noted that, in some cases, this had only generated further enquiries.

37. The LSE was adamant that it had awarded a PhD properly and correctly to then-Miss Tsai. It accepted that the personal copy of her thesis that it now held in its library was not the original version, but noted that it had never attempted to claim otherwise. Nevertheless, it was satisfied that it was appropriate to have the personal copy in its collection given that President Tsai is a distinguished former student (even the most implacable of President Tsai's opponents accepts that she was a student at the LSE). It also noted that there are contemporaneous records, in the public domain, indicating that a PhD had been awarded.
38. As well as the burden caused by the sheer volume of requests, the LSE noted that some of its staff had felt intimidated or harassed because their names had appeared in various social media posts. Responses were being posted and shared online along with allegations of impropriety on behalf of the LSE's staff. The LSE furnished the Commissioner with some examples of posts and messages that it was aware of – although it noted that it had difficulty in monitoring all such posts because they were often written in Chinese.
39. Finally the LSE drew the Commissioner's attention to decisions she had made in respect of a number of requests made to the University of Salford where those requests formed part of a barrage of requests submitted to that university over a short period of time.<sup>3</sup> The LSE argued that the same situation had occurred in this case and therefore the request was vexatious.

#### *The Commissioner's view*

40. The Commissioner is conscious that section 14(1) of the FOIA relieves a public authority entirely from its duty to confirm holding relevant information and from its duty to communicate the information it does hold. It therefore follows that the threshold that must be met for section 14(1) to be engaged must be a high one. The Commissioner does not consider that the LSE has demonstrated that this particular request meets that threshold and therefore it cannot rely on section 14(1).

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<sup>3</sup> See, for example: [https://ico.org.uk/media/action-weve-taken/decision-notices/2011/586068/fs\\_50288812.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2011/586068/fs_50288812.pdf) and [http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i554/20110726%20Decision%20EA20110060%20\(w\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i554/20110726%20Decision%20EA20110060%20(w).pdf)

41. That being said, the Commissioner does have sympathy for the LSE, to the extent that it has clearly been faced with a burden, in terms of requests and enquiries, that would have tested any public authority.
42. In addition, the Commissioner is conscious that, in respect of many of these enquiries, the LSE is effectively being asked to prove a negative. Its detractors suggest that the absence of evidence is akin to the evidence of absence. "Proving" that the loss of 40 year-old records was down to a mistake and not to foul play is a near-impossible task and the Commissioner is reminded of similar arguments over the authenticity of the then-President Obama's birth certificate.
43. It is also worth noting, for the record, that President Tsai has launched a defamation suit against two individuals who have claimed that she never received a PhD.
44. In a separate complaint, whilst not reaching a definitive view on the matter (as it is not her role to do so), the Commissioner saw no evidence to contradict the LSE's position that President Tsai's degree was properly awarded.<sup>4</sup>
45. However, the Commissioner's task in this case is not to determine whether the LSE was entitled to (or, even, did) award a PhD to President Tsai, nor is it to determine whether the LSE is now entitled to display a copy, nor the extent to which the personal copy is similar to the submitted copy. It is only about whether the complainant's requests are, or are not, vexatious.
46. The Commissioner is happy to accept that the LSE's figures as to the correspondence it received on this matter are accurate. She also recognises that, due to the large number of departments involved, the LSE would have need to spend some considerable time ensuring that its responses were consistent – particularly given the tendency of its detractors to seize on any such inconsistencies as evidence of a "cover-up."
47. Equally, the Commissioner is happy to accept that some of the LSE's staff would have felt harassed or intimidated by the way information was shared via social media – even though this may not have been the original intent of the requestors. This would particularly have been the

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<sup>4</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617860/fs50908339.pdf>

case for those individuals who were mentioned in, or on the receiving end of, some of the more derogatory emails and social media posts.

48. The Commissioner also considers it pertinent to note that the controversy and the request itself emerged in the months before a presidential election in Taiwan. That election was marked by accusations of Chinese interference and misinformation<sup>5</sup> - although it is reasonable to note that accusations were levelled at both sides.
49. However, the LSE has failed to demonstrate to the Commissioner that the complainant in this case has any meaningful link to any other requestor – beyond the fact that they have asked about the same subject.
50. The LSE did not suggest that the way that the complainant conducted herself would render the request vexatious. It's arguments focused almost exclusively on others.
51. The Commissioner considers it likely that some of the requests the LSE received during the period in question were vexatious. However, the burden of proof is on the LSE to demonstrate either that this particular complainant was making vexatious requests herself – or that she was encouraging or co-ordinating others to do so.
52. The Commissioner was puzzled by the continued reference to the Salford decisions. In the particular decision notice the LSE referred to, the Commissioner actually found that the request was *not* vexatious. Furthermore, the Commissioner actually noted in that decision notice:

*"36. If he were satisfied that the complainant's requests had been knowingly and deliberately submitted in the context of any alleged campaign, the Commissioner would therefore conclude that the complainant's requests did have the effect of harassing the public authority or its staff. The university, however, has made no specific arguments in relation to the complainant's requests beyond its contention that he is actively involved in the campaign and his requests had the effect of harassing the public authority and its staff by that association.*

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<sup>5</sup> Relations with its much larger neighbour is an important factor in contemporary Taiwanese politics. President Tsai's party broadly favours looser ties with China than its main political rival does.

- "38. *Clearly if a party makes an FOI request to a public authority which becomes 'caught-up' in a situation caused by unrelated requests, it would be unfair for his request to be treated as vexatious simply based on an accident of timing. In this case, the complainant is not completely divorced from the scenario proposed by the university due to his evident links to the dismissed person, his active participation in student politics and his engagement with the university via various channels including regular (sometimes critical) responses to the Vice-Chancellor's official blog on the university's website.*
- "39. *As a result the complainant's requests have been viewed with some suspicion by the university, however the Commissioner is not satisfied that his four requests, taken in isolation, would have the effect of harassing the university or its staff, and he is not satisfied that there is sufficient evidence to show that the requests should not be taken in isolation. When considered outside the context of the putative 'campaign' he does not find that the requests would have the effect of harassing the public authority or its staff."*
53. Unfortunately, the Commissioner no longer has the original complaint documents. She also notes that the University of Salford did submit an appeal against one of her decision notices but withdrew it – the available records do not indicate whether that appeal related to the notice above. Whilst the Tribunal did uphold a further decision by the Commissioner that a request submitted to that University was vexatious, the difference with that particular case was that there was clear evidence that the person making the relevant request was encouraging others to bombard the university (and doing so himself).<sup>6</sup>
54. In the Commissioner's view, the Salford decisions only strengthen her own view that these requests were not vexatious. The fact that a public authority may receive a large number of similar requests over a short period of time does not mean that every similar request will be vexatious – even if some of them are.
55. It would be unfair to the complainant if she were to suffer for the actions of others with whom she has no link, beyond a shared interest.

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[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i554/20110726%20Decision%20EA20110060%20\(w\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i554/20110726%20Decision%20EA20110060%20(w).pdf)

56. The LSE has not put forward any arguments which would indicate that this particular request would be burdensome to answer. Nor has it suggested that the complainant's conduct is such that it would render the request vexatious.
57. The Commissioner considers it reasonable to point out that, whilst the complainant is clearly tenacious, her pursuit of this matter has not yet reached the point at which it might be considered obsessive – although there is a danger that that point could be reached, depending on the frequency and content of any future requests she submits.. Neither has Commissioner observed any of the other usual hallmarks of a vexatious request.
58. For the record, it should be noted that, during the course of this investigation, the complainant attempted to argue a preliminary view provided, by the Commissioner, in respect of a different complaint, submitted by a different complainant. The preliminary view offered by the Commissioner in that case was private correspondence and it is unclear exactly how the complainant in this case obtained a copy. The fact that the complainant clearly had a better understanding of that complaint than the average member of the public - despite having no obvious connection – did make the Commissioner reconsider her view as to the level of co-ordination between the complainant and other requestors.
59. However, the Commissioner considers that it would be unfair for this single piece of correspondence to tip the balance in favour of the LSE. The test of vexatiousness should normally be applied at the point the request is responded to – although the Commissioner will sometimes consider the post-response behaviour of a complainant, where it corroborates the trends that existed prior to the request being made.
60. In this particular case, the complainant's correspondence only provides evidence of an awareness that other individuals are pursuing similar requests. It does not provide conclusive evidence that the complainant in this case is coordinating her actions with others. Given the weakness of the LSE's arguments on this particular point, the Commissioner considers that it would be unfair to allow this particular piece of correspondence to affect her decision.
61. Ultimately, the LSE's arguments were all based around the vexatious approach of other requestors. It was therefore incumbent on the LSE to demonstrate a connection between the complainant and the vexatious requests. As the LSE has failed to make that connection, its arguments about the actions of others fall away. As it has made no specific arguments as to why these particular requests are vexatious in their own right, it is thus left with no meaningful defence.

62. The Commissioner is therefore satisfied that the LSE has failed to demonstrate that the requests are vexatious and it is thus not entitled to rely on section 14(1) of the FOIA to refuse them.

## **Other matters**

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### *Issuing a fresh response*

63. Whilst the Commissioner has ordered a fresh response to be issued to both requests, she notes that several of the individual components of the requests seek explanations or opinions, from the LSE as to how it has acted. The FOIA only requires a public authority to disclose information which it already holds in recorded form. Where a request requires a public authority to create new information, it will not be a valid request under the FOIA.
64. Given that some of the requested information is likely to be President Tsai's own personal data, in her capacity of the regulation of data protection legislation, the Commissioner also considers it reasonable to draw the LSE's attention to decision notice [FS50908339](#) which considered a request for disclosure of the President's examination records.

### *Dealing with the burden of President Tsai-related requests*

65. Notwithstanding her decision above, the Commissioner appreciates that the LSE *has* demonstrated that the broader controversy has placed a significant burden on its staff. She therefore considers it reasonable to place the following comments on the record.
66. There is no doubt that some of the requests that the LSE has received were vexatious and that the tone of some of the correspondence was wholly inappropriate.
67. Whilst the Commissioner will examine each complaint on its own merits, where there is evidence that requestors are attempting to co-ordinate their efforts, or attempting to harass or otherwise disrupt the LSE's work, it is likely that she would uphold a section 14(1) refusal.
68. Given that the broader matter is due to be adjudicated on in a libel case, both sides will have the opportunity to present their cases and debate the evidence. The Commissioner considers that this is likely to be a much more appropriate method of bringing matters to a resolution than the making of FOIA requests.

## Right of appeal

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69. 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@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)

70. 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.
71. 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 .....**

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