



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Appeal Reference: EA/2020/0214V**

**Before**

Recorder Cragg Q.C. sitting as a Judge of the First Tier Tribunal

**Heard via the Cloud Video Platform on 2 December 2020**

**Between**

**Jonathon Read**

Appellant

and

**The Information Commissioner  
Council of City University of London**

Respondents

The Appellant represented himself

The Commissioner was not represented

Council of City University of London was represented by Rupert Paines

## DECISION AND REASONS

### DECISION

1. The appeal is dismissed.

### MODE OF HEARING

2. The proceedings were held via the Cloud Video Platform. All parties joined remotely. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way.
3. The hearing was conducted by a Judge, sitting alone. The Tribunal was satisfied that it was appropriate to conduct the hearing in this way.
4. The Tribunal considered an agreed open bundle of evidence comprising 224 pages, and three supplementary bundles which brought the total documentation to almost 1,000 pages, and in addition bundles of authorities and skeleton arguments were also submitted.

### BACKGROUND

5. The Appellant submitted what was described by the Commissioner in her decision notice of 5 June 2020 as a multi-part request submitted to Council of City University of London (City) on 10 December 2018, which City relied on section 12(1) FOIA to refuse (cost exceeds the appropriate limit).
6. On 4 January 2019, the Appellant submitted a refined request to City which said:

...please provide me with the following:

Items 1, 2 and 3: UPAC Records and Supporting Documentation;  
Item 4: City Law School Assessment Board Meeting Records; and  
Item 5: The Scope of the Purported Exemption in Appendix 1.3 of Senate Regulation 19.

Further details of these items are within my FOIA request of 10 December 2018: I refer you to that letter....”

7. The Commissioner explained that:
  6. Items 1, 2 and 3 concern University Programme Approval Committee (UPAC) Stage 1 and Stage 2 reports for two courses - Master of Laws (LLM) Professional Legal Skills and LLM Bar Professional Training - and other information associated with UPAC approval and these two courses.
8. City responded on 8 February 2019 and released information relevant to Items 2, 3, 4 and 5 of the Appellant’s request, withholding personal data under section 40(2) FOIA. In relation to Item 1, City advised, in what was clearly a reference to the UPAC report: “Report to follow”.
9. However, on 7 March 2019, following further correspondence from the Appellant, City advised him that it could not locate that report, and also confirmed that it had no further information to provide in relation to Items 3, 4 and 5 in the request.
10. City wrote to the Appellant again on 8 March 2019 confirming that, after “exhaustive searches”, it had been unable to located any relevant UPAC report, but City provided the Appellant with information it considered he might otherwise find helpful which included, as the Commissioner described it ‘programme approval and specification information associated with various of its courses, and email correspondence’ with personal data redacted. City also advised the Appellant that it had “gone as far as it can” in establishing whether further relevant information was held. At one point City relied upon s12 FOIA (time limit on searches but, after the Appellant complained to the Commissioner, confirmed its position that, in fact, it does not hold the UPAC report in which the Appellant is especially interested, and indeed that it considers that the UPAC report does not exist.

11. The Commissioner investigated the Appellant's complaint and her report contains some more explanatory background information from City which it is worth setting out here. In relation to UPAC, the Commissioner recorded this:

19. City has explained that UPAC considers proposals for new credit-bearing provision within City's study programmes, and proposals for significant amendment to existing credit-bearing provision.

20. The proposal for Stage 1 of the Bar Professional Training Course (BPTC) was to seek to reframe two separate programmes: the Post Graduate Diploma Professional Legal Skills for the BPTC, and the LLM Professional Legal Skills as separate exit points to a single programme. The proposal also sought to revise the credit levels for the modules comprising the programme. The primary driver for this proposal was so that students undertaking the BPTC would have the opportunity of enrolling on a stand-alone LLM course which would be eligible for government backed loans.

21. City says that the amendments relating to Stage 1 were not considered significant enough to require Stage 2 Approval, so has confirmed that there are no reports or supporting documents relating to a Stage 2 Approval.

22. Although two courses (or 'programmes') are involved, the Commissioner understands that, if held, the requested information would be one Stage 1 report - a report into reframing the two courses referenced above.

12. In relation to the searches made, the Commissioner records the information provided by City as follows:

25. City has detailed the searches it undertook for any Stage 1 UPAC report into reframing the courses in question. It says it conducted the search with the following team members and their respective departments, as these officers and other staff members would have been likely to hold, or to have received, such a report:

- Assistant Registrar (Partnerships and Academic Development, Quality and Academic Development)
- Head of Academic Services (Professional Programmes), City Law School
- Assistant Director (Quality and Academic Development), Student and Academic Services

- Quality & Standards Officer, Student and Academic Services
- Other members of the Law School staff who might have received the report

26. City says that all UPAC related documents are held on a shared drive held by its Student and Academic Services team. This has been thoroughly searched and the UPAC report in question cannot be found.

27. The electronic searches included searches of all electronic information held by these officers/members of staff on City IT resources. City has told the Commissioner that it is its policy that all emails and information of this nature is held on the City network and not saved locally to a desktop. City has confirmed that if a relevant UPAC report had existed it should certainly have been held electronically. If a copy had been made at any point it should have been confidentially shredded.

28. As for search terms, City understands that staff in its Law School all searched their electronic records using phrases such as: "BPTC" and "UPAC" report. Others searched the shared drives where UPAC records and documentation are held using the phrases "BPTC", "LLM" and "UPAC".

13. The Commissioner also recorded that City had contacted a former member of staff who was most likely to have written the report, but that she was unable to recall whether the report had been written. City also explained that it was accepted practice to prepare a UPAC report and that it expected that it would be found, but this had not transpired. The Commissioner noted that:

24... In any event, City says, an email conveying UPAC's recommendations was provided to the Programme Team and there was no contravention of the UPAC requirements. City communicated the relevant emails to the complainant as part of its response to his request. According to City the released information provides clear evidence that the change to the courses that are the complainant's concern was approved.

14. The Commissioner explains that the Appellant had referred to emails which suggested that City did hold the UPAC report, although the Commissioner thought there was more than one interpretation of the emails. I will address these emails in more detail below as they were discussed in detail during the appeal hearing.

15. The Commissioner also refers to additional steps that City say have been taken:

38... It says that on or around 20 February 2019, its Information Assurance Team conducted a forensic search of emails (and attachments) to establish if the report could be found. Following the search, it was confirmed that the relevant UPAC report could still not be located.

39. On 25 February 2019, the Head of Academic Services, City Law School, provided documentation to the Information Assurance Team that confirmed that the BPTC changes went through a thorough approval process. The Head of Academic Services, City Law School, then, also on 25 February 2019, advised that there did not appear to be an associated Stage 1 report.

16. The Commissioner's conclusion as a result was as follows:

40. In the Commissioner's view, the searches City has carried out for a Stage 1 report associated with changes to two courses were thorough and adequate. It has spoken to the relevant people and teams; it has searched email accounts and attachments; it has searched the relevant shared drive and has searched using appropriate search terms. City has not been able to find the report or any evidence that it ever existed, and it is difficult to know what further searches for the report City could carry out. City has explained that, while it might be usual to prepare a Stage 1 report as part of the UPAC process, it is not a requirement. The Commissioner also notes that, in this case, the amendment was not significant enough to require a Stage 2 report, which may be one explanation as to why a Stage 1 report was not produced.

41. The Commissioner has decided that, on the balance of probabilities, City does not hold any further information falling within the scope of the request of 4 January 2019 - including a specific Stage 1 report (or a Stage 2 report) - and has complied with section 1(1)(a) of the FOIA.

17. The Appellant filed grounds of appeal dated 1 July 2020 against this decision notice. The Appellant made it clear that he was concerned about the nature of the LLM Bar Professional Training offered by City:

3.The subject matter of the FOIA request concerns University Programme Approval Committee (UPAC) reports for an 'LLM Bar Professional Training' first offered by City in 2017/18. City concedes that such reports are "accepted practice" ...

4.This award, which City purports to be a Master's degree, incorporates certain assessments that are also components of the professional award of the Bar Professional Training Course (BPTC) that is the intellectual property of the Bar Standards Board (BSB).

5.The framework under which City has offered this 'LLM' is opaque and inconsistent.

18. The Appellant expressed the view that:

8...these UPAC reports are essential to determine the framework under which City has made this award, if City has complied with various legal and regulatory obligations, and if City has acted ultra vires.

19. Bearing in mind the way the case was presented at the hearing, the Appellant's main points of appeal were:

(a) It was inherently implausible that the UPAC report did not exist as (i) senior specialist staff had invited the Appellant to use FOIA to request the information; (ii) the preparation of the report would have been routine practice in any event; and (iii) a UPAC would be necessary for legal and regulatory reasons.

(b) City's searches were not thorough or adequate because (i) back-ups of local and network drives had not been searched; (ii) the wrong or insufficient terms had been searched; (iii) personal email accounts had not been searched; (iv) City had relied upon the memory of an ex-employee as to whether a report had been written and the Commissioner had accepted this hearsay evidence; (v) City's own uncertainty as to whether the report had been created.

- (c) The content of statements made to the Appellant in telephone calls with a City member of staff about maladministration, and the fact that the Commissioner has not given them any weight

## THE LAW

20. The law is straightforward and not in dispute in this appeal. Under FOIA, subject to the statutory scheme of exceptions and exemptions, the duty of a public authority is to disclose information held by the authority at the time of the request: s. 1(1) FOIA. Where there is doubt as to whether the authority has disclosed all the information which is held, the question for Commissioner, and now this Tribunal, is whether, on the balance of probabilities, further information is held which has not been disclosed: see *Bromley v IC and Environment Agency* EA/2006/0072, which was referred to by both the Appellant and City.
21. To address that question the Tribunal has to consider the scope and content of the searches carried out by the public authority. The scope of the searches undertaken must be reasonable, and sufficient to satisfy the Tribunal that (on the balance of probabilities) there is no outstanding information not disclosed.
22. The Appellant also referred to the first-tier tribunal case of *Clyne v Information Commissioner* EA/2011/0190 (10 May 2012) where the Tribunal:
- 22... notes the factors identified in *Bromley* to determine this issue namely:
- i. The quality of the Public authority's initial analysis of the request.
  - ii. The scope of the search that it decided to make on the basis of that analysis.
  - iii. The rigour and efficiency with which the search was then conducted.
  - iv. Discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which has not been brought to light.



## THE HEARING AND DOCUMENTATION

23. At the hearing of the appeal, the Tribunal considered a witness statement from Dr Emma White who is City's data protection officer and head of information assurance. Dr White has been in post since November 2019 and so her witness statement deals with events mostly prior to her appointment, although she says that she has led the response to the ICO's enquiries in relation to the Appellant's complaint.
24. Her statement provides a history of the receipt of the request, the efforts made by City to locate the UPAC report, and the searches made as detailed in the decision notice (see paragraph 12 above). She explains that

On 8 March 2019, [the then head of information assurance] advised the Appellant that, after conducting exhaustive searches for information, the reports the Appellant had requested could not be found. However, with his email [the then head of information assurance] provided additional documents to the Appellant to illustrate that, despite being unable to find the UPAC Reports, the relevant course was nonetheless approved.

25. Dr White goes on to explain in some detail City's process for approval of new Programmes and amendments to existing Programmes. She explained that:

In accordance with City's University Programme Approval and Programme Amendment Policies, the University Programme Approval Committee ("UPAC") is an advisory committee to the Deputy President and Provost ("Deputy President") of City, who has delegated authority from Senate via the President to take decisions on approval of programme proposals and proposals for significant amendments to existing student programmes.

26. Dr White explains the UPAC process undertaken in relation to the LLM Bar Professional Training Course and exhibited documents which showed how the final approval of the programme took place in February 2017. Dr White accepts that a UPAC report would normally have been drafted by the then secretary to

UPAC, but that there was nothing which actually required a report to be provided, for example in the UPAC terms of reference.

27. Dr White also refers to an email correspondence that has taken place between the then secretary to UPAC and the Appellant in which the former stated that "If [City] are saying that the reports don't exist they likely don't, as frustrating as that may be." and "It's entirely possible that previously referred-to UPAC reports were an assumption, based on common practice, rather than representative of the process applied here." Dr White refers at length to this process to support City's belief that the UPAC Report requested by the Appellant was never actually prepared.

28. Somewhat belatedly City has provided the emails which lay out the detail of some of the searches it has made for the UPAC in February 2019 (and as detailed in the decision notice). At the hearing of the appeal, Dr White gave evidence and was taken through these emails and other aspects of the searches undertaken by the Appellant. In response to questions which suggested that further searches should or could have been made Dr White accepted that she did not know whether back-up files would have been searched, and that there were always searches for further terms that could be made. However, she confirmed her view that there was no reason why the searches actually made would not have revealed the report if it existed.

29. It is worthwhile exploring some of the emails referred to in the context of the searches made and the efforts to find the UPAC report. In my view, the general tenor of the emails is of a number of members of staff striving to find a UPAC report which they initially believed must be in existence.

30. Thus, on 8 February 2019 the FOI department at City emailed Assistant Registrar (Partnerships and Academic Development) (the Assistant Registrar) to ask:

...would it be possible to forward me at your earliest convenience the: UPAC Stage 1 approval from February 2017 for the BPTC amendments which were to take affect from September 2017.

31. On 12 February 2019, the Assistant Registrar replied

I don't have any Stage 1 UPAC paperwork on file from the Law School in 2016-17. .... The UPAC report would have been sent to the School. If there was something that went through Board of Studies and was approved as a Minor Amendment, this would be filed in a different area here and I would need the programme code in order to search for it.

32. On 12 February 2019, the Head of Academic Services wrote to the Assistant Registrar

Further to my previous email, I am asking around amongst our ADEs, PDS, Quality team etc to see if they have a copy of the report. It was, I understand, considered a major course amendment so was required to go through UPAC Stage 1 (but not Stage 2). In my own records I have located some correspondence between [the secretary to UPAC] and our ADE from 21 February 2017 relating to a draft version of the report, but sadly no actual report. The programme code (pre change) was LAPDBPT01; after the change the codes were LALMBPC01 and LAPRDBPC01.

33. The Assistant Registrar replied the same day to say:

I have had another look for the paperwork and can find nothing at all in Stage 1 files, nor are those programme codes showing in our Minor Amendments record, where an item subsequently escalated as a Major Amendment might show. In the spirit of a forensic investigation, is there anything you can forward me from [the secretary to UPAC]? If a final report had been issued, the programme team would certainly have been sent it.

34. On 13 February 2019 the Head of Academic Services wrote to the FOI department to say:

I have located an email from [the secretary to UPAC]... titled "Changes to BPTC/LPC" dated 1 March confirming that the course changes were approved. This did not include the UPAC report itself. I would assume that the report would have been sent some time fairly soon after that,

although final reports can often take some months to be delivered. The final report would have been sent by [the secretary to UPAC], most probably to [SB] and possibly some others as well. It's likely to be titled something like the above-mentioned email. I've also found some earlier emails titled "Changes to BPTC/LPC Programmes - Stage 1 UPAC approval". So you're probably looking for an email with a title something along those lines.

35. On 14 February 2019 the Head of Academic Services wrote to another officer City whose job title is not clear (AE):

As promised at Ops Board I am getting in touch regarding the problem we are having locating a UPAC Stage 1 report. There is one document which he has requested which we cannot locate. It is the UPAC report of the Stage 1 approval of changes to the BPTC programme. We made major changes to the BPTC (and the LPC) for the academic year 2017/18. Given the extent of the changes it was agreed that they would need UPAC Stage 1 (only) approval (School approval wasn't sufficient). UPAC considered the proposals on 13 February 2017. As you will see they approved the proposals with recommendations. I have a further email dated 1 March (attached), giving final approval once the recommendations had been addressed. However, we cannot find the report anywhere. No one in the School has a copy and [the Assistant Registrar] tells me she can't find in the normal places.

36. AE replied on the same day:

I will undertake a further search of the documentation on our shared drive. I will also look to see what has been submitted to Student Systems via Service Now to enable the changes to be implemented in SITS. As well as emails, it's possible [the secretary to UPAC] had stored things on her local computer rather than the network drive. Unfortunately, she used a laptop and I am pretty sure that IT removed all files and data from it when she left.

37. Also, on 14 February 2019 it is clear that a number of other members of staff were asked whether they had a copy of the report.

38. Steps were also put in place to search the files of the secretary to UPAC's files and that produced the following response from AE on 21 February 2019:

I cannot see the final report these folders. In the admin folder, the document titled 'Meeting Notes for UPAC Stage 1' looks to be the notes that [the secretary to UPAC] took during the meeting which would have informed the drafting of the final report. The first section looks to contain the notes of the initial committee discussion, and the second under the programme team heading looks to be the notes of the meeting with colleagues from Law to answer the committee's questions. Whilst this isn't the final report, it does provide evidence of the committee's discussions.

39. These notes were forwarded to the Appellant, and are in the bundle for this hearing.

### SUBMISSIONS AND DISCUSSION

40. At the hearing of the appeal, the Appellant's main submission was that insufficient searches had been carried out, either because resources such as back up files had not been searched or because the wrong, or insufficiently wide, search terms had been used. For example, he criticised the search term BPTC as not being an appropriate term to locate the report.

41. For City, Mr Paines submitted that the searches had been reasonable, and had clearly shown that those who would have expected to have received and seen the report had not done so. Search terms such as BPTC were those used internally to refer to the course and 'UPAC' had been a search term used as well. Mr Paines submitted that the disclosed correspondence revealed a desire to find the report to fulfil the Appellant's request.

42. I find that it is now clear beyond peradventure from the emails disclosed and evidence of Dr White, that City expected to find the UPAC report sought by the Appellant and was surprised when it was not discovered when searches were

made. A degree of frustration can be seen in the email correspondence that the report had not been located, along with a clear desire to locate the report so that disclosure to the Appellant could be considered. Extra searches were carried out as a result.

43. I accept the evidence of Dr White, supported by the email correspondence, that if the report had been written it would have been distributed to a number of people, none of whom, when asked, could locate it. As Dr White said there was no reason why the searches carried out would not have revealed the report if it existed. The fact that the report did not materialise from the searches, and the fact that no one had a copy or could recall whether it had been written led City to the reasonable conclusion, in my view, that the report was never actually produced.
44. Dr White's statement carefully explains the process followed in February and March 2017 that led to the approval of the programme even without a UPAC report and points out that, although the production of a report would be good practice, it was not actually required to produce a report.
45. In my view, from the documentation I have seen and the evidence I have heard by far the most likely scenario is that the report was never written. In my view the searches carried out by City would have been very likely to have revealed the report if it had been written. I accept the evidence that a UPAC report was not necessary and it was possible for authorisation to be given through a combination of minuted decisions made at meetings and email confirmations.
46. Although there are references in the emails which suggest or assume the existence of the UPAC I accept that these were made in the mistaken belief that the report had been written and would be found. I accept the submission made in Mr Paine's skeleton argument that if a UPAC report existed, that report was likely (i) to have been circulated to a considerable number of people; and (ii) to have been identifiable by one or more of the keywords used (in particular, 'UPAC').

47. On that basis, and taking into account the evidence of searches undertaken it is my view that City focused its search correctly for the UPAC report, the scope of the searches undertaken was reasonable, rigorous and efficient, and the searches are sufficient to satisfy me that on the balance of probabilities there is no outstanding information not disclosed. I am satisfied on the balance of probabilities that the report sought was never actually written.
48. I concur, though, with the Commissioner when she said, at the end of the decision notice as follows:
42. The Commissioner advises City to review its record keeping. If a decision is made not to produce a report – particularly, as in this case, when it is the usual practice to do so – it would be helpful if this decision were to be formally recorded.
49. I note that Dr White mentioned in evidence that further searches could be made if terms were provided by the Appellant. That does not mean that the searches actually made were not sufficient, but recognises that there may be other searches that could be carried out. Anything further done in relation to more searches is outside the parameters of this appeal. I would, however, urge the Appellant to consider the strong likelihood, as I have found, that the report he seeks was never written and does not exist.
50. There is one final aspect of the case I should mention. The Appellant refers to telephone conversation he had with another member of City’s staff in September 2019 in which he says he was told there had been maladministration and a cover up and that remedial steps would be taken. The Commissioner decided not to speculate on this aspect of the case.
51. In my view the documentary and witness evidence that has now been considered by the Tribunal as to what actually happened in relation to searching for the information make the contents of this correspondence, which it is not said actually referred to the UPAC report, irrelevant to the issues which have to be decided.

## CONCLUSION

52. On that basis this appeal is dismissed.

**Stephen Cragg QC**

Judge of the First-tier Tribunal

Date: 4 December 2020.

Date promulgated: 8 December 2020.