

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 June 2016

**Public Authority:** The Governing Body of the University of  
Cambridge

**Address:** The Old Schools  
Trinity Lane  
Cambridge  
CB2 1TN

#### Decision (including any steps ordered)

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1. The complainant has requested emails between a professor of the University of Cambridge (the "University") and named individuals. The University has explained it does not hold these emails for its own purposes under the FOIA.
2. The Commissioner's decision is that the University is correct when it states it does not hold the requested emails to any extent for its own purposes. No further steps are required.

#### Request and response

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3. On 11 January 2016 the complainant wrote to the University and requested information in the following terms:
  - 'a. *Any emails between Professor [name redacted] and [name redacted] (both email addresses [email address redacted] and [email address redacted] regarding Sir Tim Hunt, his comments in Seoul, the reaction to them, his resignation from the ERC Scientific Council, and an ERC report written about the comments by ERC press adviser [name redacted] between June 8th and July 30th inclusive.*

- b. Any emails between [name redacted] and Sir Tim Hunt between June 8th 2015 and the present.*
  - c. Any emails between [name redacted] and [name redacted] from June 8th 2015 to the present.*
  - d. Any emails between [name redacted] and [name redacted], or emails sent by or received by [name redacted] featuring the keyword '[name redacted]' from June 8th 2015 to the present.*
  - e. Any emails sent or received by [name redacted] featuring the keyword [name redacted] from June 8th 2015 to the present.*
  - f. Any emails between [name redacted] to The Times newspaper and/or [name redacted], or emails sent by or received by [name redacted] featuring the name [name redacted] (or just [name redacted]) from June 8th 2015 to the present.'*
4. The complainant explained that he considered the requested emails should be classed as being held by the University.
  5. On 2 February 2016 the University informed the complainant that the information he requested is not held. It explained that any information sent or received by the professor concerned regarding these matters is not held to any extent for the University's own purposes under the FOIA.
  6. On the same date the complainant wrote to the University questioning why it does not hold the information.
  7. He explained he already had an email sent by the professor to the President of the European Research Council (the ERC), which was released to him under the ERC access to documents scheme. He explained this was sent from the professor's University email address in a work capacity and proves such correspondence exists.
  8. On 25 February 2016 the University sent the complainant its internal review. It explained that it considered that the issue was not whether or not the emails still exist or ever existed. It confirmed that it does not consider that the information is held to any extent for the University's own purposes.

9. The University explained it does not consider that the professor was acting in her capacity as an employee of the University but considers that she was sending and receiving correspondence in a wholly private capacity.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 1 March 2016 to complain about the way his request for information had been handled.
11. The complainant has argued that:
  - i. He considers the University's initial response was not clear and that it was not obvious that the requested emails might exist but would not be held for the purposes of the FOIA.
  - ii. The University did not apply any exemptions to the requested material.
12. The Commissioner considers the scope of this case will be to determine whether the University is correct when it says that it does not hold the information requested for the purposes of the FOIA.

### **Reasons for decision**

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#### **Information held for the purposes of the FOIA**

13. Section 3(2) of the FOIA sets out the two legal principles that establish whether information is held for the purposes of FOIA. This states that information is held by a public authority if—
  - (a) it is held by the authority, otherwise than on behalf of another person, or
  - (b) it is held by another person on behalf of the authority.
14. The Commissioner's guidance can be found on our website at: <https://ico.org.uk/media/fororganisations/documents/1148/information-held-by-a-public-authority-for-purposes-of-foia.pdf>
15. The guidance explains that when information is solely held by a public authority on behalf of another person, it is not held for the purposes of the FOIA.

16. However, the information will be held by the public authority if the authority is holding that information for someone else but also holding it to any extent for its own purposes.
17. In addition, when a public authority holds information principally or partly on behalf of another person but exercises control over the information, it will also hold the information itself.

### **Private emails**

18. The guidance does state that non-official communications within a public authority are not held for the purposes of FOIA, if they are not created by a member of staff in the course of his or her official duties. It states that in most circumstances, private emails sent or received by staff in the workplace via the public authority's email system would not be held by the authority for the purposes of FOIA.
19. It could therefore be argued that if the requested emails constitute private emails, they are held solely by the University on behalf of the member of staff and that it has no interest in this information.
20. In the decision notice for the case reference FS50409217, the Commissioner considered a similar case where Liverpool John Moores University (LJMU) argued that for the purposes of the FOIA, it did not hold the private emails sent from the university account of a former lecturer. The case was appealed to the First-Tier Information Tribunal (*EA/2012/0109*), and this Tribunal followed an approach which had been recommended in a previous Upper Tribunal Judgement (*University of Newcastle v ICO and BUAV [2011] UKUT185 (AAC)*).
21. In that case the Upper Tribunal had given guidance on how Tribunal's should approach the question of whether a public authority 'holds' information for FOIA purposes in such circumstances (paragraph 28 and 29). It argued that the following principles should be considered:
  - mere physical possession was not enough to establish that information was 'held';
  - the Tribunal should avoid adopting an unduly legalistic approach in individual cases;
  - the Tribunal should look at all the factual circumstances of the particular case and take a view as to whether, as a matter of common sense, the information in question was sufficiently meaningfully connected to the public authority, such that it could be taken to 'hold' that information; and
  - each case must ultimately turn on its own particular facts.

22. In the LJMU case, the Tribunal was satisfied that the emails were completely private and that there was no “crossover” between the lecturer’s contracted University work and the private work he was dealing with. It considered that the relevant emails did not relate to University business.

### **The complainant’s position**

23. In this case the complainant has argued that the emails were sent from an official University account and that the professor was acting in her capacity as a prominent employee of the University. He has argued she is actively engaged in diversity issues, especially relating to women in science and in this context the emails are relevant to her position at the University. The complainant has argued that the professor was publically supporting Sir Tim Hunt and this support was significant because of her position.
24. The complainant has therefore explained that he does not accept the professor was emailing in a private capacity, not least because he considers she made it publicly very clear that this was a professional and not a personal matter. The complainant has argued the professor wrote many articles in defence of Sir Tim Hunt, all of which he considers were commissioned on the basis of her role at Cambridge, her experiences there and her role as its former gender champion. He has argued that every single article mentions her role and position at the university.

### **The University’s position**

25. The University has confirmed to the Commissioner that its policy with respect to private email use entitles University employees to make personal use of its computing facilities. It has explained that in practice many members of the University use their @cam.ac.uk email account for both private and work purposes.
26. In this case the professor concerned has confirmed that she uses her @cam.ac.uk account as her private email account.
27. The University has explained that as regards access to any files held on the University’s computing system, its policy states that access will only be allowable in so far as it is necessary for the University to comply with national legislation (such as the Regulation of Investigatory Powers Act and the Lawful Business Practice Regulations) or in connection with the investigation of misuse. The University therefore considers there are no grounds entitling it to access the emails the complainant has requested.

28. The University has therefore explained that its staff are free to use their email accounts to correspond in a personal capacity with third party persons or organisations, provided they do not engage in substantial use of the University's IT facilities for private financial gain or for commercial purposes.
29. The University has had no input into the emails in question and has argued that the correspondence in question has no meaningful connection to its business. The University has explained it has no interest in the subject matter of the requested information and does not seek to drive any collateral benefit from it. All of the emails are private in that they relate to non-University sector-wide discussion groups, or to the professor's role as a member of the Scientific Council of the ERC, rather than University business.

### **Conclusion**

30. In view of the above, the Commissioner considers that the requested emails are the private emails of the professor and that they are therefore not held by the University for its own purposes.
31. The Commissioner is satisfied that in practice many members of the University use their @cam.ac.uk email account for both private and work purposes and that in this case the professor was emailing in her private capacity and not on University business. The Commissioner has reviewed a sample of the emails and is satisfied that they are of a personal nature.
32. The Commissioner considers the University was therefore correct to inform the complainant that the information he had requested is not held by the University and that any information sent or received by the professor concerning these matters is not held to any extent for the University's own purposes under the FOIA.
33. The University is not obliged to apply an exemption to the requested information if it is not held by the University to any extent for its own purposes.

## Right of appeal

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34. 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)

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.

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**