

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 August 2018

Public Authority: Cardiff University
Address: Friary House
Greyfriars Road
Cardiff
CF10 3AE

Decision (including any steps ordered)

1. The complainant has requested information on the correspondence from two named Professors. Cardiff University (the University) stated that the information was not held for the purposes of the FOIA under the provisions of section 3(2).
2. The Commissioner's decision is that the requested information is not held by the University for its own purposes and therefore falls outside the definition of information held for the purposes of FOIA under section 3(2). She requires no steps to be taken.

Request and response

3. On 5 December 2017 the complainant requested the following information:

'Please provide me with copies of correspondence sent or received by the following staff at the University of Cardiff:

- Professor Patrick Minford - Professor of Applied Economics Cardiff Business School

- Professor Professor Kent Matthews - Sir Julian Hodge Professor of Banking and Finance Cardiff Business School

And the following individuals/representatives of the following individuals:

- Rt. Hon. Owen Paterson MP
- Jacob Rees-Mogg MP
- Rt. Hon. Liam Fox MP
- Viscount Matt Ridley
- David Goss
- Amy Tinley
- Stewart Jackson
- Tim Smith
- Raoul Ruparel
- Adam Werrity
- Shanker Singham
- Crawford Falconer

Between 15 July 2017 – present.'

4. On 4 January 2018 the University responded that it was unable to provide the requested information as *'having liaised with the members of staff in question, we have concluded that the correspondence which you have requested has not been entered into as part of their job role within Cardiff University. As you will be aware many academics are involved in public debate and are engaged based on their expertise in their discipline and not because of their duties as an employee of the University. Academics are free to correspond with individuals external to the University and contribute to public or private debate in their own right and, indeed, the academics in question would arguably continue to correspond with the individuals identified even if they were to cease their employment with Cardiff University. As such the University considers that any such correspondence is undertaken in a private capacity and would be classed as personal written communications.'*
5. The complainant requested an internal review on 8 January 2018.
6. The University sent the outcome of its internal review on 12 February 2018 upholding the decision that the University does not hold the requested information for the purpose of the FOIA:

'Further discussions have taken place with Professor Minford and Professor Matthews and with the Academic School in which they work. The Professors have assured us that the work to which this correspondence relates has taken place in their own time and at their own expense.'

Scope of the case

7. The complainant contacted the Commissioner on 14 March 2018 to complain about the way his request for information had been handled. In particular the complainant did not agree that the requested information was not held on behalf of the University.
8. The Commissioner considers that the scope of the investigation is to determine if the requested information is excluded from FOIA because the information requested was not held for the University's own purposes and therefore falls outside the definition of information held for the purposes of FOIA under section 3(2).

Reasons for decision

Section 3(2) – information held by a public authority

9. Section 1 of the FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it.
10. Section 3(2) sets out the criteria for establishing if information is held for the purposes of the FOIA:

"For the purposes of this Act, 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."
11. The Commissioner's guidance on "Information held by a public authority for the purposes of the FOIA" (<https://ico.org.uk/media/for-organisations/documents/1148/information-held-by-a-public-authority-for-purposes-of-foia.pdf>) states that when a public authority holds information solely on behalf of another person it is not held for the purposes of the FOIA and that each case needs to be considered according to the specific circumstances.
12. The Commissioner's guidance considers that a key determining factor is whether the University has any interest in, or control over, the disputed information.

The University's position

13. The University stated that although it physically holds the information of the nature requested it does not hold this information for the purposes of the FOIA.
14. The University investigated the matter with the Dean of Cardiff Business School, to understand what activities Professors Minford and Matthews undertake on behalf of the University. The University found that *'any communication on the topics mentioned in the request would have been undertaken in their capacity as private individuals and not as part of their contractual duties with the University.'*
15. The University explained that the activities of academic staff are managed through a Workload Allocation Model (WAM) system. Both Professors *'have a fully allocated workload for their University duties in the WAM, including research and teaching activities, and there is no allocation within their employed hours of work for any such campaigning or lobbying activity around the subject of Brexit. Indeed, the allocation of such activity would be incompatible with the University's status as a public body and registered charity.'*
16. The University confirmed that the Professors *'conduct any activities of this nature in their own time and are not paid for it by the University.'* The University's IT Regulations allow staff reasonable use of IT facilities and email for their personal use and are free to correspond with whom they wish. *'It is therefore our opinion that the University only holds this information on behalf of Professor Minford and Professor Matthews.'*
17. The University also explained the *'universal academic custom and practice that when undertaking non-University work or work of a personal nature, academics will make reference to the academic institution to which they belong. This does not mean that the University endorses an organisation that one of its employees is a member of, nor does it mean that when an academic speaks out on public issues, that they are speaking on behalf of the institution. It is a principle of academic freedom that academics are able to comment and communicate ideas or opinions, including those that are controversial or unpopular, whether as an individual or as part of a group, based on their expertise irrespective of the institution to which they belong.'*
18. The University stated that it does not hold any affiliation with Economists for Free Trade and does not hold a contractual relationship to engage in or conduct research on its behalf: *the University has no use for, or interest in, this information and any correspondence held in our email system by Professors Minford and Matthews in regard to Brexit*

lobbying and Economists for Free Trade...is not held for the University's purposes.'

19. The University concluded that it did not hold the requested information for the purposes of the FOIA.

The complainant's position

20. In correspondence to the Commissioner, the complainant referred to the Upper Tribunal case (University of Newcastle v IC and BUAV [2011] UKUT185 (AAC)) which held that a common sense approach should be adopted and suggested principles to consider. The information was not ultimately disclosed.
21. The complainant also referred to the Commissioner's decision notice (https://ico.org.uk/media/action-weve-taken/decision-notices/2012/724614/fs_50409217.pdf) in which the Commissioner (and the First tier Tribunal) decided that the emails were completely private.
22. The complainant argued that there were a number of reasons why this case was different:
 - Whilst the Economists for Free Trade benefits and promotes their members under their academic job titles, the Universities in question often also promote and benefit from the professor's role in the Economists for Free Trade.
 - We believe that in this specific case, there is sufficient overlap between the Professors involved in this FOI, their role within the Economists for Free Trade and their role at their respective Universities that the information should be held under the Freedom of Information Act.
 - Both Professors are employed within the Julian Hodge Institute of Applied Macroeconomics, the website states, *'the main aim of the Institute is to carry out research into the behaviour of the UK economy, and to study in particular its relationship with the other economies of Europe'*
23. The complainant provided examples of University blogs. One referred specifically to Professor Minford as chair of the Economists for Free Trade group and is part of a team researching *'how larger firms in Wales might be affected by Brexit.'* The CU WelshBrexiteBlog quoted Professor Matthews: *'Wales has nothing to fear'*.
24. The complainant concluded that the University promotes both Professors' *'Brexit stances and knowledge so strongly suggests that*

there is a crossover between their roles at the university and their activities outside of it' and so the emails requested were not completely private and do in fact relate sufficiently to their work duties for the University.

Is the disputed information held by the University?

25. In this case, the main issue is whether or not the information requested (correspondence on the economics of Brexit) is information held by the University for its own purposes.
26. The Commissioner has considered her guidance which lists factors that would indicate that the information is held solely on behalf of another person:
 - the authority has no access to, use for, or interest in the information;
 - access to the information is controlled by the other person;
 - the authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; or
 - the authority is merely providing storage facilities, whether physical or electronic.
27. From her own research, the Commissioner notes that Professor Minford is employed as Professor of Applied Economics at Cardiff Business School. In his profile he lists his research topics as Macroeconomic modelling and forecasting and Macroeconomic policy. There is an extensive list of published papers and books on economic models.
28. The Commissioner also notes that Professor Matthews is employed as Sir Julian Hodge Professor of Banking and Finance, Cardiff Business School. In his profile he lists his research topics as Modelling and forecasting the macro economy; Monetary and credit influences on the economy; Money and banking deregulation in developing economies and Economics of the underground economy (including violent injury determination). There is an extensive list of published articles on 'efficiency' (from the UK water industry to Chinese banking) and other articles on the relationship between injury in violence and the price of alcohol.
29. Although the complainant has demonstrated that there are some links between the Professors and comments on Brexit and there may be some 'crossover', he has not shown the Commissioner any convincing evidence that this is part of their roles at the University.

30. The Commissioner is satisfied that the University has demonstrated that there is no allocation within their employed hours of work for any such campaigning or lobbying activity around the subject of Brexit; that they are not paid for it by the University; that their academics are free to comment as individuals; and that the University has a policy that allows staff reasonable use of IT facilities and email for their personal use
31. Therefore, the Commissioner considers that these comments are external work and not a required part of their employment at the University.
32. Based on her guidance the Commissioner considers that:
 - The University has no access to, use for, or interest in the requested information;
 - Access to the information is controlled by the Professors
 - The University does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; and
 - The University merely provides electronic storage facilities.
33. Having considered the factors in her guidance and the arguments presented by both parties the Commissioner is satisfied that, on the basis of the evidence presented, the requested information is excluded from FOIA because the information requested was not held for the University's own purposes and therefore falls outside the definition of information held for the purposes of FOIA under section 3(2).

Right of appeal

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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.
36. 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

Pam Clements
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SK9 5AF