

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

### **Decision notice**

**Date:** 5 June 2020

**Public Authority:** The Council of City, University of London

**Address:** City, University of London  
Northampton Square  
London  
EC1V 0HB

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

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1. The complainant has requested University Programme Approval Committee records, meeting records and information about an exemption in City, University of London's Senate Regulations. City, University of London ('City') released some information (redacting personal data under section 40(2) of the FOIA) and advised it had been unable to locate other relevant information – a particular report. City's position is that the report that the complainant is seeking does not exist.
2. The Commissioner's decision is as follows:
  - On the balance of probabilities, City does not hold the Stage 1 report that the complainant is seeking, or any Stage 2 report. It has communicated to the complainant all the information it holds that is relevant to his request and has complied with section 1(1)(a) of the FOIA.
3. The Commissioner does not require City to take any remedial steps.

## Request and response

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4. The complainant had submitted a multi-part request submitted to City on 10 December 2018, which City relied on section 12(1) of the FOIA to refuse (cost exceeds the appropriate limit).
5. On 4 January 2019, the complainant submitted a refined request to City in the following terms:

*"...As agreed by telephone, and without prejudice to my position that my entire request should already have been complied with in full, 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...."*
6. These five items had originally been requested as part of the 10 December 2018 request. 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.
7. City responded to the 4 January 2019 request on 8 February 2019. It released information relevant to Items 2, 3, 4 and 5 of the complainant's request, withholding personal data under section 40(2) of the FOA. Regarding Item 1, City advised: "Report to follow".
8. In response to further correspondence from the complainant, on 7 March 2019 City advised him that it could not locate the report. City confirmed that it had no further information to provide in relation to Items 3, 4 and 5 of the request.
9. City wrote to the complainant again on 8 March 2019 confirming that, after "exhaustive searches" it had been unable to locate any relevant UPAC report. City sent the complainant information it considered he might find helpful: programme approval and specification information associated with various of its courses, and email correspondence. City advised that it had redacted personal data from this information under section 40(2) of the FOIA.

10. Finally, City advised the complainant that it had "*gone as far as it can*" to accommodate his request and that it anticipated that further efforts to establish whether it held relevant information, and to locate, retrieve and extract held information would exceed the time limit of 18 hours. City indicated that it would rely on section 12(1) of the FOIA to refuse to process the request further.
11. Following an internal review City wrote to the complainant on 10 October 2019. It maintained its position.
12. City has subsequently confirmed to the Commissioner that it is not relying on section 12(1) in relation to the request of 4 January 2019; it considers that the report in question – in which the complainant is particularly interested – does not exist ie that it does not hold this information.

### **Scope of the case**

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13. The complainant contacted the Commissioner on 1 November 2019 to complain about the way his request for information had been handled.
14. Having carried out what it considers to be extensive searches for it, City's position is that it does not hold further information falling within the scope of the complainant's request, specifically a particular Stage 1 UPAC report. This is because it considers it is unlikely that this report was ever produced.
15. The Commissioner's investigation has therefore focussed on City's compliance with section 1(1) of the FOIA. She has considered whether the searches for relevant information that City has undertaken are adequate and whether, on the balance of probabilities, City holds further information falling within the scope of his request, namely a Stage 1 UPAC report.

### **Reasons for decision**

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#### **Section 1 – general right of access to information held by public authorities**

16. Under section 1(1) of the FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to him or her if it is held and is not exempt information.

17. In his request, the complainant has requested particular UPAC records/reports and supporting information. City has released the relevant information it says that it holds. The complainant considers that City holds further information; namely, a specific UPAC report concerning two particular courses. In his correspondence to the Commissioner the complainant has referred only to the LLM Bar Professional Training course which he has noted that City has offered since 2017/18. However, the Commissioner understands that his original 10 December 2018 request also concerned the LLM Professional Legal Skills course.
18. In its submission to the Commissioner, City has confirmed that it has released to the complainant information that falls within the scope of items 2, 3, 4 and 5 of his request. It has also advised the Commissioner that the complainant has been corresponding with City for 18 months, during which time it has provided him with a considerable amount of information; in response to FOIA requests and outside of the FOIA, and in response to subject access requests under data protection legislation.
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.
23. In its submission City told the Commissioner that its Student and Academic Services have advised, internally, that if a report for Stage 1 *does* exist, it could not be located. City said it suspected that a report was never created, however, it was unable definitively to confirm this. As noted, City subsequently confirmed to the Commissioner that it

considers that no UPAC reports associated with the two courses in question exist ie that it does not hold this information.

24. According to City's submission to the Commissioner, as part of its search it contacted the former member of staff who was most likely to have written the report, but she was unable to recall whether or not a report had been written. City has acknowledged that it is its accepted practice that a report is usually drafted, which is why City expected to find the report and to be able to provide it to the complainant. It says this does not appear to have been done in this case, but City has noted that it is in the discretion of Student and Academic Services whether to create a report. 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.
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".
29. According to City, there is no evidence that the UPAC report ever existed. City says that, had such a report been written, there was no reason why it would have been deleted and no record of any such report's destruction.
30. From the complainant's perspective, he has provided the Commissioner with copies of email correspondence that he received as a result of a subject access request he submitted to City. In one of those emails, discussing the complainant's FOI request, a member of City staff says that they do not consider UPAC reports should be made public.
31. This has suggested to the complainant that City holds the specific UPAC report he has requested. While this might certainly be one interpretation, in the Commissioner's view another interpretation is that the staff member is advising that City does not publish UPAC reports more generally. They may have been unaware at that stage that City's position was that it could not locate the Stage 1 report the complainant has requested and that it considered that this report had probably never existed.
32. The complainant has commented that City has 'lost' information (ie the Stage 1 report) or that this information is 'missing'. The Commissioner recognises that its communications about the report may have been, or have appeared, somewhat unclear but City's position is that it is most likely that this report never existed, rather than it has been lost, or is missing.
33. The complainant has also mentioned a telephone conversation he had with a member of City staff in September 2019 in which that staff member appeared, to the complainant, to 'allude' to documents having been found, advising that these had not been intentionally hidden from the complainant, but that he had not received them due to "*maladministration*". The complainant has told the Commissioner that, in their conversation with him, the City staff member had also referred to there having been a "*cover up*". In the absence of further detail about this conversation, the Commissioner does not intend to comment or speculate on it.
34. Finally, the complainant has referred to another internal email that City had released to him previously. In that email, dated 1 March 2017, a member of City staff asks for a "*copy of the completed documentation*

(including completed and corrected specifications)" in relation to the amendments to the two courses in question.

35. The complainant had submitted a further request to City that included a request for this "documentation" with "specifications". City had relied on section 12 to refuse that request but, in its response to the request, had explained to the complainant that, in line with the policy that was in place in 2017 when the programme amendment was reviewed, the amendment to the BPTC/LLM programmes had been reviewed at a physical meeting of UPAC on 13 February 2017. That Panel had approved the amendment, subject to a number of recommendations, that were relayed to the Programme Team by email. The Programme Team's responses had been reviewed by the Deputy President, who Chaired the physical UPAC meeting, and he had approved them. City advised that it is common practice that responses to conditions/recommendations are reviewed electronically (or printed if the Chair prefers) and that it would not convene another physical meeting of UPAC to review them.
36. In his correspondence to her in the current complaint, the complainant has told the Commissioner that he nonetheless considers that the email of 1 March 2017 indicates that a Stage 1 report (if not a Stage 2 report) does exist.
37. The Commissioner notes that the 1 March 2017 email refers to "documents" and "specifications"; it does not specifically refer to a Stage 1 report. It is the case that a Stage 1 report of the type the complainant envisions was produced *might* have existed and been held by City at March 2017. However, if a Stage 1 report had ever been held, and City's position is that such a report never existed, at the point of the complainant's request almost two years later City had been unable to locate it. Such a scenario is not out of the bounds of possibility.
38. In the detailing of its correspondence with the complainant in its submission to the Commissioner, City has provided further information about the searches it carried out, in addition to those described above. 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. City has provided the Commissioner with copies of the relevant email exchanges.

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.

### **Other matters**

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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. Relying on the memory of a member of staff – who may, in any case, leave the university in the future – is not a satisfactory approach.



## **Right of appeal**

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43. 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)

44. 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.
45. 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**  
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**SK9 5AF**