

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 May 2020

Public Authority: The Governing Body of Nuffield College
Address: Nuffield College
University of Oxford
New Road
Oxford
OX1 1NF

Decision (including any steps ordered)

1. The complainant has requested Nuffield College (the college) to disclose any documents relating to work undertaken by a named Professor with Cambridge Analytica (CA) relating to Argentina in 2015 and any other projects with CA and SCL Elections Ltd (SCL) during 2014-2018. The college refused to comply with the request, advising the complainant that it does not hold the requested information for the purposes of the FOIA.
2. The Commissioner's decision is that the college does not hold the requested information for the purposes of the FOIA.
3. The Commissioner does not require any further action to be taken.

Request and response

4. On 25 September 2019, the complainant wrote to the college and requested information in the following terms:

"Attached please find my completed FOI request for any documents relating to work that [name and position redacted], University of Oxford- did with Cambridge Analytica relating to Argentina in 2015, what that work entailed and documents relating to any other projects with Cambridge Analytica and SCL conducted during 2014-2018."

5. The college responded on 31 October 2019. It stated that the work undertaken by the Professor was undertaken in a personal capacity and not as part of his employment at the college. It therefore stated that it was not in a position to comply with the complainant's request.
6. The complainant requested an internal review on 25 November 2019. He stated that the college had failed to acknowledge the related nature of the work to the Professor's work at the college and questioned what it had reviewed to determine the information was undertaken in a personal capacity.
7. The college responded on 28 November 2019. It stated that the work which the Professor undertook for SCL was performed under a consultancy agreement between a private limited company and SCL. It confirmed that it was not party to the agreement and the work undertaken was not required as part of the Professor's duties at the college. The college advised that the requested information is therefore not held for the purposes of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 4 December 2019 to complain about the way his request for information had been handled. He believes the work undertaken relates to the Professor's work at the college and is therefore held by the college for the purposes of the FOIA. He is of the view that there is a vital public interest in its disclosure and the college has an ethical duty to disclose it.
9. The Commissioner considers the scope of her investigation to be to determine if the college holds the requested information for the purposes of the FOIA.

Reasons for decision

Section 3 – information held for the purposes of FOIA

10. Section 1 of the FOIA provides a general right of access to recorded information that is held by public authorities. When a request for information is made, a public authority must confirm whether it holds any information of the nature specified in the request. If it does the public authority must either communicate it to the applicant or provide a refusal notice explaining why the information cannot be disclosed in accordance with section 17.

11. Section 3(2) of the FOIA 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.
12. The Commissioner's guidance explains how each case must be considered individually to determine whether a public authority holds the requested information for its own purposes and therefore for the purposes of FOIA. There are various factors that assist in this determination; some of these are listed in paragraphs 9 and 11 of the Commissioner's guidance, which can be accessed here:

<https://ico.org.uk/media/fororganisations/documents/1148/information-held-by-a-public-authority-for-purposes-of-foia.pdf>
13. The Commissioner made enquiries to the college. She asked it to explain in more detail why it considers it does not hold the requested information for the purposes of the FOIA and to provide a copy of the consultancy agreement it referred to in its correspondence to the complainant. She also asked the college to consider the factors outlined in the Commissioner's guidance and more specifically whether the college has any control over the research in question, funded it, if the research contributes to the Research Excellence Framework or whether the college holds any intellectual property rights.
14. The college advised that the Professor is both an employee and trustee of the college. In confidence it provided the Commissioner with a copy of the consultancy agreement under which the work in question was undertaken. The college advises that the agreement is between SCL and a private limited company; a company through which the Professor provides his consultancy services and he is one of the directors. Accordingly the Professor entered into the agreement with SCL as a director of this company; not as an employee of the college. The college stated that it is neither party to the agreement nor mentioned in it at all; the scope of works and all terms (including the expectation of confidentiality) is between SCL and the private limited company. It does not involve the college.
15. The Commissioner has reviewed the agreement and she is satisfied that the agreement is a private consultancy agreement between SCL and a private limited company. The college is not party to it. The agreement quite clearly states that all intellectual property rights are the absolute property of SCL. She is satisfied that the agreement supports the

college's position that it does not hold the requested information for the purposes of the FOIA.

16. The college proceeded to consider the various factors outlined in the Commissioner's guidance and the more specific questions the Commissioner asked during her investigation.
17. The college advised that all work is stored on the Professor's individual, password – protected laptop. The laptop was purchased through the college's IT department but access is controlled entirely by the Professor. The physical storage for the requested information is therefore provided by the Professor's laptop, which he uses for his own purposes as well as those relating to the college. The college stated that none of the requested information is backed up or otherwise stored on college servers.
18. The college confirmed that it has no access to the data; nor would the college have any use for, or interest in, the information relating, as it does, to the Professor's analytical searches. It stated further that it provided no assistance in creating, recording or filing the requested information and would have no involvement or control over the retention, alteration or deletion of the information. This was, and is, governed by the specific agreement between the private limited company and SCL, in which the college played no role.
19. In terms of clerical and administrative support, the college confirmed that it does provide such support to the Professor but only for his college-related duties which his work for SCL did not form part of. It stated that there was no college clerical or administrative support provided for the activities in question. It has not dealt with any enquiries about the information in question (and argued that given the practicalities and realities of the situation it could never do so) and has not included the costs arising from holding the requested information in its overall budget.
20. And lastly, the college confirmed that the research does not contribute to the Research Excellence Framework. It said that it was therefore steadfast in its position that the requested information lacks the necessary characteristics to be deemed held by the college for the purposes of the FOIA.
21. The Commissioner is satisfied that the requested information is not held for the purposes of the FOIA. The college has provided a copy of the consultancy agreement for the piece of work and this clearly supports the college's position. It is an agreement between SCL and a private limited company to which the college has no part in any way. The agreement confirms that all intellectual property rights go to SCL. The

college has advised that it has provided no clerical or administrative support for this piece of work and has no control over the retention, deletion or alteration of the requested information; this is governed exclusively by the specific agreement between the private limited company and SCL. It has no access to the information; this is controlled entirely by the Professor and none of the requested information would be backed up or otherwise stored in college servers.

22. As the Commissioner is satisfied that the requested information is not held for the purposes of the FOIA, she does not require any further action to be taken.

Right of appeal

23. 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

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

24. 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.
25. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF