

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

### **Decision notice**

**Date:** 13 October 2022

**Public Authority:** The University Council  
**Address:** University College London  
Gower Street  
London  
WC1E 6BT

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

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1. The complainant has requested information relating to the Coronavirus Mitigation Group ('CMG').
2. University College London ('UCL') disclosed the majority of the information requested but refused to provide the minutes of the CMG meetings and the matters discussed, citing section 36(2)(b)(i) and 36(2)(b)(ii) and 36(2)(c) (prejudice to the effective conduct of public affairs) of FOIA.
3. The Commissioner's decision is that the withheld information engages section 36(2)(b)(i) and 36(2)(b)(ii) and the public interest favours maintaining the exemption.
4. The Commissioner does not require the public authority to take any steps.

## Request and response

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5. On 27 July 2020, the complainant wrote to UCL and requested information in the following terms:

“Under the terms of the UK Freedom of Information Act, 2000, I would like to request the following information about UCL's Coronavirus Mitigation Group

Information regarding the makeup of the Coronavirus Mitigation Group - who the members of the group are, their positions in the group, and what other connection/posts they hold at UCL and/or elsewhere.

I would also like to request all information about the Coronavirus Mitigation Group, including, but not limited to, the group's mandate, minutes of meetings held by the group, the matters discussed, and the basis for decisions taken by the group regarding UCL's response to coronavirus and subsequent implementation of policies such as social distancing and the mandatory wearing of face coverings on campus.”

6. Originally, UCL denied holding the requested information based on the grounds that the CGM was not a formal group. The Commissioner considered this matter under the reference number IC-70147-S5J7<sup>1</sup> and determined that UCL did hold information that fell within the scope of the request. The Commissioner instructed UCL to issue a fresh response to the request which it did on 25 November 2021.
7. UCL's fresh response disclosed the majority of the information that the complainant requested. However, UCL refused to provide the minutes of the meetings, including the records of matters discussed, under section 36(2)(b)(i) and 36(2)(b)(ii) and 36(2)(c).
8. The complainant was dissatisfied and requested an internal review on 7 January 2022.
9. UCL provided the outcome to its internal review on 21 February 2022. It upheld its previous position.
10. The Commissioner understands that the complainant submitted this request after being denied entry to a university building for not wearing a mask. The complainant is exempt from wearing a mask.

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<sup>1</sup> [ic-70147-s5j7.pdf \(ico.org.uk\)](https://www.ico.org.uk/our-work/cases/70147-s5j7)

11. Within its refusal notice and internal review, the University addressed this point, claiming none of its policies would refuse an individual, who is exempt from wearing a mask, access to any UCL premises.
12. It's not the role of the Commissioner to determine whose version of events is correct. It is just the Commissioner's role to consider if UCL is correct when it says it is entitled to rely on the exemptions that it has done.
13. He will consider UCL's application of section 36(2)(b)(i) and 36(2)(b)(ii) first and, depending on his findings, may go onto consider section 36(2)(c).

### **Reasons for decision**

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14. The Commissioner notes he has recently dealt with a similar case, IC-137313-F5N6<sup>2</sup> in which the complainant requested minutes of covid mitigation group meetings. The Commissioner notes any such minutes will detail the matters discussed at these meetings.
15. Paragraphs 13-17 of IC-137313-F5N6 discusses the unique nature of section 36 and how it relies upon the opinion of the qualified person, which UCL referred to in its refusal notice of 25 November 2021.
16. Section 36(2)(b) of FOIA states that "Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of this information under this Act would, or would be likely to inhibit-
  - (i) the free and frank provision of advice, or
  - (ii) the free and frank exchange of views for the purposes of deliberation
17. Since the Commissioner is satisfied that there is significant crossover between the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation, he will consider these subsections together.
18. For the same reasons as outlined in IC-137313-F5N6, the Commissioner considers both section 36(2)(b)(i) and section 36(2)(b)(ii) engaged. It is

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<sup>2</sup> [ic-137313-f5n6.pdf \(ico.org.uk\)](#)

a reasonable opinion that disclosing meeting minutes would deter UCL officials and staff from providing free and frank advice, or exchanging views for the purpose of deliberation, in the future. Therefore, the Commissioner will go onto consider where the balance of the public interest lies.

19. On the one hand, the Commissioner accepts that there is an overall interest in public authorities being as transparent as possible about their processes, especially their response to the pandemic.
20. However, the Commissioner must take into account the circumstances of the request at the time that it was made, 27 July 2020, a time at which the pandemic was rapidly evolving.
21. In its refusal notice UCL explains 'Release of information of this nature at the very start of the pandemic could lead to a chilling effect for future discussions, which would undermine the University's ability to deal as effectively with such issues.'
22. The Commissioner believes it is even more important for UCL staff and officials to contribute robustly and frankly to discussions which may require swift action, such as the rapidly evolving coronavirus pandemic.
23. UCL has explained that 'The public interest was served by the regular communication by the university communications team to all staff and students, as well as 'flow down' or relevant information from those involved in the meetings.'
24. The Commissioner is satisfied therefore that UCL proactively published information to satisfy the public interest but not at the extent of compromising the ability of its staff, and the CGM, to discuss frankly the policies in question.
25. Ultimately, the Commissioner believes the complainant's concern about discrimination can be addressed by alternative means within UCL and does not require the disclosure of the requested information in order to be pursued. Taking into account the timing of the request including the importance of policies surrounding face masks and other covid policies at the time, the Commissioner considers the balance of the public interest lies in maintaining the exemption, though he notes that this might not be the case were the request made today.

## Right of appeal

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26. 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: 0203 936 8963

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)

27. 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.
28. 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

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**