

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 December 2022

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

Decision (including any steps ordered)

1. The complainant requested the names of two internal reviews conducted by University College London (UCL). UCL refused to provide this information on the basis of section 36(2)(c).
2. The Commissioner's decision is that section 36(2)(c) is engaged and the public interest favours maintaining the exemption and withholding the information.

Request and response

3. On 17 January 2022 the complainant made a request to UCL for information. This followed an earlier FOIA request in which UCL had stated that it had:

"conducted an Special Inquiry into Regenerative Medicine at UCL and the Inquiry report was published in September 2017 which made a number of recommendations. The paper in question has been scrutinised by the Inquiry as well as two internal reviews at UCL..."
4. The complainant subsequently made an information request for copies of the reports of these two internal reviews, a request that was refused by UCL under section 36(2)(c) of FOIA and is the subject of a separate

decision notice¹. On 17 January 2022 the complainant made a further request which is the subject of this notice. This was request was for:

- 1) "Was one of the internal reviews that Professor Pillay referred to titled "[redacted]", which resulted from allegations made by [name redacted] in 2015?
 - 2) Was one of the internal reviews that Professor Pillay referred to titled "[redacted]" with the report dated December 2018?
 - 3) If one or both of the two reports mentioned in questions 1 and 2 were not the reports of the internal reviews that Professor Pillay was referring to, what were the titles of the reports, when were they completed, who made the complaints resulted in the internal reviews and when did UCL receive those complaints?
 - 4) Professor Pillay also states "The paper in question has been scrutinised by the Inquiry as well as two internal reviews at UCL, a House of Commons Select Committee...." Please tell me which House of Commons Select Committee Professor Pillay was referring to and in which document(s) from the Committee were the results of that particular scrutiny published?"
5. UCL responded on 1 February 2022 confirming it held information relevant to the request but considered it exempt under section 36(2)(c) and 40(2) of FOIA, a position it upheld following an internal review.

Reasons for decision

6. Section 36 of FOIA states that information is exempt where, in the reasonable opinion of a Qualified Person (QP), disclosure would, or would be likely to, prejudice the effective conduct of public affairs.
7. UCL has applied section 36(2)(c) to refuse to provide the titles of the internal reviews. UCL did answer part 4 of the request.
8. Section 36(2)(c) of FOIA states:

"(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs"

¹ IC-164698-B8Q4

9. The exemptions at section 36 can only be engaged on the basis of the reasonable opinion of a QP. The Commissioner is satisfied that the Provost of the University was authorised as a QP under section 36(5) of FOIA at the relevant time and that UCL did ask for and receive his opinion.
10. The Commissioner accepts it was reasonable for the QP to consider that there was need to protect the effective conduct of public affairs by protecting the effective conduct of internal reviews of this nature. It was his opinion that disclosing the titles of the internal reviews would in and of itself impact the effectiveness and robustness of reviews by opening up the process to public scrutiny when a 'safe space' is needed to allow the process to remain effective.
11. The Commissioner is also satisfied that the QP's opinion, namely that inhibition relevant to subsection 36(2)(c) would be likely to occur through disclosure of the withheld information, is reasonable. He is therefore satisfied that the exemption was engaged correctly.
12. As section 36(2)(c) is a qualified exemption, and as the Commissioner is satisfied the exemption was applied correctly in this case, he has next considered the balance of the public interest test.

The public interest test

13. The Commissioner understands the background to this request relates to a report published in the medical journal The Lancet in 2008 by Dr Macchiarini on transplantation of a tissue engineered airway. The Commissioner notes there are many [news articles](#) about this that document the issues that followed involving failed synthetic organ transplants and the deaths of several patients. UCL's part in this stemmed from its involvement in regenerative medicine research with a focus on tracheal and large airway tissue engineering and its relationship with Professor Macchiarini (who held an honorary Professorship at UCL). UCL conducted its own [Special Inquiry](#) into this. There was also an investigation by a House of Commons Select Committee and the two internal reviews that are the subject of this request.
14. The complainant is of the view that the two internal reviews at UCL referred to by Professor Pillay are the two he has referred to in parts 1 and 2 of this request. He considers that if this is the case then one of the reviews does not even mention the 2008 Lancet paper. The complainant disputes the idea that the internal reviews are so confidential that even knowing the titles could affect research governance at UCL, particularly if the internal reviews are the documents the complainant suspects as one of these is available online

so cannot be seen to be confidential. The Commissioner has considered the information in the public domain, but it does not alter his conclusion.

15. The complainant argues that if the names of the internal reviews were disclosed it would confirm that the claims by Professor Pillay that "the substance of the concerns having been considered previously" is false and the reasons given for not, in the complainant's words, properly investigating the research misconduct, are spurious. The complainant considers the internal reviews will show that UCL has not properly investigated the deaths of young patients resulting from the use of the technology described in the 2008 Lancet paper and that UCL has obtained millions of pounds of public money by suggesting it can replicate the claims made in this paper.
16. UCL recognises that the internal reviews are related to an area of research about which there is interest from the public and there is a public interest in disclosing the names of the reviews in order to meet its obligation of being transparent with the public. As a public body, the integrity of any review process is clearly something that is in the public interest, and the public has an interest in ensuring that such processes are robust, particularly in the context of academic research.
17. Against disclosure UCL argued that:

"The public interest is served by publication of the Special Inquiry (the 'Inquiry') into Regenerative Medicine at UCL and the publication of the Inquiry report in September 2017 which made a number of recommendations. The academic paper in question has been scrutinised by the Inquiry as well as two internal reviews at UCL, a House of Commons Select Committee as well as reviews by the Lancet itself. Disclosure of the names of the internal reviews does not add significantly to the general public's understanding of this issue and does not assist in assessing whether UCL have taken appropriate action, as this is served by the information already available.

There is a need for a safe space away from external influence in which allegations of research misconduct can be reviewed and decisions taken. The naming of individuals involved in the complaints process (which would happen if the titles of the reports were disclosed) may result in a 'chilling effect'. UCL relies on individuals coming forward with complaints of academic misconduct, which they may be less likely to do if they thought the fact they had made a complaint, and the names of those they had complained about, might be made public."
18. The Commissioner must assess whether, in all the circumstances of this case, UCL has properly applied section 36 and the associated public interest test.

19. Whilst the Commissioner accepts there is a general public interest in openness and transparency and there is public interest in the subject matter here, he is mindful that UCL has published details of its Inquiry and findings and these have been scrutinised independently.
20. Publishing the titles of the internal reviews would undoubtedly reveal the individuals involved in the complaints procedure and the Commissioner recognises the importance of individuals feeling they can come forward to report any perceived misconduct. There is a very real possibility that disclosing information that would name people who have come forwards would undermine the process and have the chilling effect argued by UCL. This would not be in the public interest as there is a need for complaints to be raised and public authorities to have the space needed to investigate complaints without public commentary until the appropriate time.
21. The Commissioner acknowledges the complainant's view that disclosing the titles of the reviews would help establish if there was any wrongdoing on the part of UCL but the Commissioner is not convinced that the titles of the reviews alone would go anyway to establishing this.
22. Without any strong countervailing arguments to the contrary, the Commissioner considers that the balance of the public interest favours maintaining the exemption in this case given the likely impact on the complaints process and the ability of UCL to investigate misconduct allegations.
23. The Commissioner therefore finds that 36(2)(c) FOIA has been properly applied in this case.

Right of appeal

24. 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
Website:

25. 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.
26. 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

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