



**First-tier Tribunal
General Regulatory Chamber
Information Rights**

Appeal Reference: EA/2020/0286

**Heard remotely by video conference
On 2 December 2021**

Before

**JUDGE HAZEL OLIVER
ALISON LOWTON
ANNE CHAFER**

Between

DR YUNGTAI HSU

Appellant

and

INFORMATION COMMISSIONER

Respondent

Appearances:

Appellant – in person
Respondent – did not attend

Determined at a remote hearing via video (Cloud Video Platform) on 2 December 2021.

DECISION

The appeal is dismissed

REASONS

Mode of hearing

1. The proceedings were held by video (CVP). All parties joined remotely. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way.

Background to Appeal

2. This appeal is against a decision of the Information Commissioner (the “Commissioner”) dated 16 September 2020 (IC-40405-S7L3, the “Decision Notice”). The appeal relates to the application of the Freedom of Information Act 2000 (“FOIA”). It concerns information about the student records of the Taiwanese President Tsai Ing-wen requested from the Board of Trustees of the University of London (the “University”).

3. President Tsai Ing-wen was awarded a PhD in 1984 by the University, while she was registered as a student of the London School of Economics and Political Science (“LSE”, which at the time did not have its own degree-awarding powers). Various claims have been made publicly that President Tsai does not hold a valid PhD, and there have been previous FOIA requests on this topic.

4. On 26 January 2020, the appellant wrote to the University and requested the following information (the “Request”):

“[1] Please verify whether the student records as attached provided by Tsai is from LSE, and if yes please advise if the records on the document is identical to the same of the records in LSE registry?”

[2] Please advise whether Tsai’s oral exam held on October 16, 1983 was for A) PhD upgrade from M. Phil statud, or B) for PhD qualification examination (Viva).” [sic]

5. The University responded on 24 February 2020. It stated that it did not consider element [1] to be a valid request for information, and withheld information under element [2] under section 40(2) FOIA (personal data). The University upheld its position on internal review.

6. The appellant complained to the Commissioner on 13 May 2020. The Commissioner decided:

- a. The wording of element [1] was not a valid request for information, and the appellant was advised to make a fresh request.
- b. Her preliminary view was that section 40(2) would apply, based on a recently issued similar decision about President Tsai’s student record (FS50908339). The appellant did not accept this preliminary view.
- c. The Commissioner went on to decide that the information requested in element [2] was exempt from disclosure under section 40(2) as it is the personal data of President Tsai, and disclosure would contravene the data protection principles. Although disclosure potentially furthered legitimate interests and was arguably necessary, these interests were considerably outweighed by President Tsai’s right to privacy. She did not obtain submissions from the University due to the similarity with decision FS50908339.

The Appeal and Responses

7. The appellant appealed on 12 October 2020. His grounds of appeal can be summarised as follows:

- a. The three libraries that should have received copies of President Tsai's thesis never had a copy at the time, supported by emails from those libraries, and so the Commissioner wrongly said the original thesis had been lost. An unsigned hard copy of the thesis submitted to the LSE Women's Library in June 2019 appears to be a draft document.
 - b. The appellant did not advance a number of theories and propositions relied on by the Commissioner in relation to legitimate interests.
 - c. The Commissioner's comment that President Tsai filed a defamation suit against individuals who have questioned the authenticity of her PhD and thesis is incorrect.
 - d. President Tsai has waived her right to privacy by releasing her student record on 4 September 2019. This is selective disclosure and there are inconsistencies in the documents, and the appellant relies on a forensic report.
 - e. The appellant is simply seeking to verify the level of the viva examination, in light of President Tsai's claims that she received a one-and-a-half PhD.
8. The Commissioner's response maintains that the Decision Notice was correct.
- a. There is no dispute that the University held the requested information or that it is personal data.
 - b. She considered a range of legitimate interests, not simply the appellant's interests.
 - c. She considered several media reports which referred to President Tsai's attempt to sue two academics for defamation.
 - d. Her comments about the loss of the thesis and donation of a copy in June 2019 were based on the University's submissions in FS50908339.
 - e. Disclosure of the information is not necessary to meet the relevant legitimate interests – other records are held and the University has confirmed various matters already.
 - f. The appellant had provided a copy of the student record released by President Tsai to the University when he made the Request, and expressed his concerns. The Commissioner has obtained a copy of the withheld information and it is different from the student record relied on by the appellant, containing more detail than President Tsai would reasonably expect to be disclosed to the world at large under FOIA.
 - g. The forensic report relied on is based on copies of the documents, and the video recording of President Tsai's speech is not relevant to whether President Tsai would reasonably expect the information to be disclosed.
9. The appellant submitted a reply which repeats allegations that the thesis was not provided to the relevant libraries at the time, rather than being lost or mis-shelved, and says that Professor Dennis Peng personally checked on 21 October 2019 that no such thesis had been enrolled or registered. The confirmation sought is not simply for a private interest – it would clear questions raised by the public. President Tsai should have no expectation of privacy of the viva examination report as it is the essential verification of scholarship, and no less of a public record than her diploma or inclusion on a pass list. The appellant raises various matters which he says indicate academic fraud, and says his request is to "verify" whether the oral viva examination was a PhD student transfer from MPhil or a final PhD viva.
10. The appellant says that he seeks: *"(1) An order directing the University of London to disclose the requested information – The verification of the level of President Tsai's examination taken on 16 October: A PhD Viva, or an MPhil transfer to PhD probation student;*

and (2) A clear response from University of London, in the interest of academic transparency and integrity, whether President Tsai was awarded a PhD degree by University of London Worldwide (distant learning) as an external student, rather than an internal student.”

11. The University was not joined as a party to the appeal, but provided a written submission which is addressed in the discussion below.

Applicable law

12. The relevant provisions of FOIA are as follows.

1 General right of access to information held by public authorities.

- (1) Any person making a request for information to a public authority is entitled—
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.

.....

40 Personal information.

- (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
- (2) Any information to which a request for information relates is also exempt information if –
- (a) it constitutes personal data which do not fall within subsection (1), and
 - (b) the first, second or third condition below is satisfied.
- (3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—
- (a) would contravene any of the data protection principles, or
 - (b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.

.....

58 Determination of appeals

- (1) If on an appeal under section 57 the Tribunal considers—
- (a) that the notice against which the appeal is brought is not in accordance with the law, or
 - (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently, the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.
- (2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

13. Section 3(2) of the Data Protection Act 2018 (“DPA”) defines “personal data” as “any information relating to an identified or identifiable living individual”. The “processing” of such information includes “disclosure by transmission, dissemination or otherwise making available” (s.3(4)(d) DPA), and so includes disclosure under FOIA.

14. The data protection principles are those set out in Article 5(1) of the General Data Protection Regulation (“GDPR”), and section 34(1) DPA. The first data protection principle

under Article 5(1)(a) General Data Protection Regulation (GDPR) is that personal data shall be: “*processed lawfully, fairly and in a transparent manner in relation to the data subject*”. To be lawful, the processing must meet one of the conditions for lawful processing listed in Article 6(1) GDPR. These include where “*the data subject has given consent to the processing of his or her personal data for one or more specific purposes*” (Article 6(1)(a)). It also includes where “*processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.*” (Article 6(1)(f)). The GDPR goes on to state that this condition shall not apply to processing carried out by public authorities in the performance of their tasks, but section 40(8) FOIA omits this provision, meaning that Article 6(1)(f) can be used as a lawful basis for the disclosure of personal data under FOIA.

15. The Article 6(1) balancing exercise involves consideration of three questions (as set out by Lady Hale DP in ***South Lanarkshire Council v Scottish Information Commissioner*** [2013] UKSC 55):

- (i) Is the data controller or third party or parties to whom the data are disclosed pursuing a legitimate interest or interests?
- (ii) Is the processing involved necessary for the purposes of those interests?
- (iii) Is the processing unwarranted in this case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject?

The wording of question (iii) is taken from the Data Protection Act 1998, which is now replaced by the DPA and GDPR. This should now reflect the words used in the GDPR – whether such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data.

16. In ***Goldsmith International Business School v Information Commissioner and the Home Office*** [2014] UKUT 563 (AAC), Upper Tribunal Judge Wikeley set out eight propositions taken from case law as to the approach to answering these questions. These include: the test of necessity must be met before the balancing test is applied; “necessity” carries its ordinary English meaning, being more than desirable but less than indispensable or absolute necessity; the test is one of “reasonable necessity”, reflecting European jurisprudence on proportionality; and this involves the consideration of alternative measures, so the measure must be the least restrictive means of achieving the legitimate aim in question.

Issues and evidence

17. The parties agree that the information requested about President Tsai’s oral exam is personal data about her. The issues are:

- a. Does the requested information constitute personal data?
- b. Is the data controller or third party or parties to whom the data are disclosed pursuing a legitimate interest or interests?
- c. Is the processing involved necessary for the purposes of those interests?
- d. Are such interests overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data?

18. By way of evidence and submissions we had the following, all of which we have taken into account in making our decision:

- a. An agreed bundle of open documents.
- b. A closed bundle of documents containing the withheld information (the examination records).
- c. Two videos which were shown to us during the hearing – an excerpt from a public speech by President Tsai, and a record of a search of library records by Dr Peng.
- d. Written submissions dated 6 September 2021 and oral submissions from the appellant.

19. We did not hear any witness evidence. There was some confusion about evidence from Dr Peng. The Tribunal did not permit him to give evidence at the hearing, as no witness statement setting out what evidence he was going to give to the Tribunal had been provided in advance. Witness statements are required from anyone giving evidence at a hearing, and must be provided well in advance as part of the bundle of documents so that evidence does not take the other party by surprise (see the directions on pages B134 and B138 of the open bundle). The appellant had provided a written witness introduction to Dr Peng. He also provided a written statement one day before the hearing which stated, “*I, Weng-jeng Peng, as a foundation witness for Dr. Yungtai Hsu’s appeal bundle video exhibit H (bundle page A98), am willing to provide the video clip which was recorded at IALS library on Oct. 19, 2019 as the evidence to the UK Tribunal Court.*”

20. The Commissioner had expressed concern in an email of 25 November to the Tribunal and the appellant that Dr Peng had been added as an attendee at the hearing and no witness statements had been served. Judge Oliver had issued directions on 29 November which stated that Dr Peng was welcome to attend the hearing as an observer, but no witness statement had been served and the Tribunal was not expecting to hear any witness evidence or other representations from Dr Peng. The appellant may have misunderstood this direction as meaning that Dr Peng needed to provide a witness statement in order for the Tribunal to view the video of him searching library records.

21. As confirmed during the hearing, the Tribunal was able to view the video evidence and accept that this was a true record of what had occurred without needing to hear further evidence from Dr Peng. This video evidence had been provided to the Commissioner well in advance as was referred to in the open bundle. It would not have been fair to allow Dr Peng to provide additional evidence because the Commissioner had not been provided with this in advance. The Tribunal also considered that additional evidence from Dr Peng was not necessary, as we had accepted the video evidence and had clear submissions from the appellant.

Discussion and Conclusions

14. In accordance with section 58 of FOIA, our role is to consider whether the Commissioner’s Decision Notice was in accordance with the law. As set out in section 58(2), we may review any finding of fact on which the notice in question was based. This means that we can review all of the evidence provided to us and make our own decision.

15. The appellant presented two videos:

- a. An excerpt from a public speech by President Tsai (with English subtitles). During this speech, she talked about having a PhD from LSE, and said she had a “one and a half” PhD.

- b. A video of Dr Peng conducting a search for President Tsai's PhD thesis on the computer records of the Institute of Advanced Legal Studies (IALS) library, assisted by a member of library staff. This shows that they were unable to find a record of the thesis under President's Tsai's name or the title of the thesis. The member of staff says that if the thesis had gone missing it would be in the catalogue, and as it is not there it suggests that the library had not received it.

16. The open bundle also contains an email from LSE Library which states they had never received a copy of the thesis, and an email from the Senate House Library which states they did not receive a copy from the external examiners and a third copy was sent to them in 2011.

17. At the hearing, the appellant explained that he is seeking to verify whether President Tsai did obtain a PhD from the University of London as she claims. Copies of the thesis were not provided to the relevant libraries at the time in accordance with the University's requirements. The Commissioner simply accepted the University's assertion that the thesis had been lost or mis-shelved. However, the evidence in the emails from the libraries and Dr Peng's search shows that the thesis was never provided, and there should be a microform copy of the thesis if it had been lost. The Commissioner failed to investigate this. The appellant says he has not received a straight answer to various questions. This particular request is made to verify that President Tsai was awarded a PhD, rather than simply having a viva for an MPhil transfer.

18. The appellant accepts that the University has stated publicly that it holds records of the viva and that President Tsai was awarded a PhD degree. When asked about this by the Judge, he initially said that he didn't think the University was telling the truth. He went on to say that he can't say the University is lying, but he hasn't been able to get a straight answer. He says that some sort of truth needs to come out in order to convince the public.

19. We deal in turn with the issues.

20. ***Does the requested information constitute personal data?*** We had understood this was not in dispute, but the appellant said he did not think this was a personal issue as President Tsai is a public figure. We therefore deal with this issue briefly. We find that the requested information is the personal data of President Tsai. It is information about the detail of her oral examination and the degree awarded to her. It is clearly biographical information about a living individual. The fact that President Tsai is now a public figure does not prevent this from being personal data about her.

21. ***Is the data controller or third party or parties to whom the data are disclosed pursuing a legitimate interest or interests?*** The Commissioner accepts that the appellant is pursuing a legitimate interest. We agree that there are some legitimate interests in disclosure of the information. The appellant says that he wants to verify whether President Tsai was awarded a PhD by the University of London, as she claims. This is in the context of her being a public figure as President of Taiwan, and the public speech in which she claims to have a one-and-a-half PhD. She has also relied on having a PhD as part of her involvement with a pharmaceutical company. The appellant says he has not been given a straight answer to other queries, and points to the fact that the original PhD thesis does not appear to have been filed at the relevant libraries as required by the rules of the University. He also referred to the position of Dr Peng, who he says is the subject of an arrest warrant issued in Taiwan for libel relating to questions about the award of a PhD degree to President Tsai. This is sufficient to provide a legitimate interest in seeking information about the level of President Tsai's degree.

22. ***Is the processing involved necessary for the purposes of those interests?*** The Commissioner says that these legitimate interests have been met by disclosure of other information, meaning disclosure of further information is not necessary. President Tsai's name is on LSE's contemporaneous pass list of 1984, and the title of her thesis is listed in an index document held by IALS which was published in a 1985 document. In addition, the University has confirmed publicly that President Tsai was examined orally on the thesis in internal review correspondence, and has confirmed that it holds record of her viva in response to other FOIA requests. The submission from the University also confirms, "*The University has stated in FOIA responses that it holds records of the viva and the pass list in regard to this graduate and can therefore confirm the award of the degree.*"

23. The appellant says that the IALS records document is for reference, and does not show that there has been an examined and passed thesis. As noted above, he also says that the University is not telling the truth, or that he has not been able to obtain a straight answer. His written submissions say he is seeking disclosure of the information as without this the broad principles of accountability and transparency cannot be met. Disclosure is needed to protect the public from the consequences of possible academic fraud. In his oral submissions, the appellant referred to the reputation of British academia.

24. Having considered the above arguments, we find that disclosure of the requested information is not necessary. In particular, the University has confirmed publicly that a PhD degree was awarded to President Tsai. In its original response to the Request, the University stated, "*The University of London confirms that Ms Ing-Wen Tsai was awarded a PhD by the University of London in 1984 and she was registered as an LSE student*", and this statement was repeated in the internal review response. The internal review also repeats information from other FOIA requests that, "*The University can confirm its records state that the examiners reviewed the thesis and examined the candidate orally on the subject of the thesis...Dr Tsai was recorded on the University's 1984 pass list*". The University's submissions for this appeal also confirm that it holds records of the viva and pass list, and can confirm award of the degree. These clear statements from the University satisfy the legitimate interests in confirming that President Tsai was awarded a PhD degree.

25. The appellant says that the absence of the original thesis from any of the libraries, as required by the University's rules, indicates that there was no thesis at the time. Having viewed the emails from the libraries and the video from Dr Peng, it does appear that none of the libraries have a record of the thesis being provided at the time the PhD was awarded in 1984. We accept that the explanation originally provided by the University that the thesis had been lost or mis-shelved may not be correct, as there is no catalogue or microform record of the original thesis. However, this does not mean that President Tsai was not awarded a PhD degree, or that there has been academic fraud. It simply means that the thesis was not filed correctly in the libraries in 1984. The University has provided clear statements confirming that President Tsai had an oral (viva) examination and was awarded a PhD degree. The appellant has not explained why the University would be lying about this or involved in academic fraud, or why the University would be mistaken about what its own records say. The appellant's written submissions state, "*University of London should confirm Tsai's PhD oral examination actually took place to avoid obfuscation*". The University has already made statements confirming this. Disclosure of the requested information in order to verify the status of President Tsai's degree is not reasonably necessary in these circumstances.

26. Although we have found that disclosure is not necessary, for completeness we have gone on to consider the final stage of the test on the assumption that the necessity test had been met.

27. *Are such interests overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data?* We find that President Tsai does have clear privacy rights in relation to her personal data. The appellant has requested disclosure of details about her degree examination and award, as contained in the closed information that we have seen. This information is the records of the examination process. The University's submission states a general policy that it does not disclose details of a graduate's degree to a third party without consent. They may in some cases confirm a qualification has been obtained. We note the University has done so in this case, by confirming the oral examination and degree award. However, further details such as the classification of the degree, copies of coursework, registration details and dates of completion are not disclosed. PhD students do reasonably expect that their qualification will be a matter of public record through libraries or other registers. However, we find that President Tsai would have a reasonable expectation of privacy in relation to further information about her degree award, and would not reasonably expect details to be released to the world at large under FOIA without her consent. In particular, she would not expect there to be disclosure of records or other information relating to the examination process.

28. The appellant says that President Tsai has publicly disclosed her student record sheet, and so has waived her right to privacy. However, as noted by the Commissioner, the University was aware of this when it responded to the Request. Having viewed the closed information, we can confirm that (as noted by the Commissioner in her response) this contains different and more detailed information than the student record that has been publicly released. President Tsai has not waived her right to privacy in the requested information by releasing a less detailed student record.

29. The appellant also says that a viva examination report is the essential verification of scholarship, and no less of a public record than a diploma or inclusion on a pass list. We do not agree. Details of a student's examination report, as opposed to the fact of an award of a degree, is private information that an individual would not reasonably expect to be disclosed to the world at large.

30. We find that the legitimate interests in disclosure are outweighed in this case by the privacy rights of President Tsai. As discussed above in relation to the necessity test, the University has already provided clear public confirmation that President Tsai had an oral (viva) examination and was awarded the degree of PhD. The appellant says that "verification" is needed because copies of the thesis were not provided to the relevant libraries in 1984. As explained above, it does appear from the evidence that copies of the thesis may not have been provided to the libraries at the time by the examiners, rather than having been lost or misshelved. However, this does not mean that the University has provided inaccurate information about the fact that President Tsai was awarded a PhD degree. There is also nothing to suggest that the correct number of bound copies were not provided by President Tsai prior to the viva examination.

31. The Tribunal has seen the withheld information. We are not able to provide details about this information as it is President Tsai's personal data. However, we can confirm that this information is consistent with the public statements that have already been made by the

University. There is no indication that the University has lied in its previous responses, and no evidence of academic fraud. There is nothing in the withheld information that causes us concern in relation to these matters. In the absence of any evidence of fraud or other inappropriate behaviour, the limited interests in disclosure are clearly outweighed by President Tsai's privacy rights.

32. We therefore uphold the decision of the Commissioner, and find that the University was entitled to rely on the exemption in section 40(2) FOIA to withhold the information requested in the second part of the Request. For the avoidance of doubt (as it was not put as an issue in the appeal), we also agree with the Commissioner that the first part of the Request was not a valid request for information.

33. Finally, the appellant's reply has also asked for, "*A clear response from University of London, in the interest of academic transparency and integrity, whether President Tsai was awarded a PhD degree by University of London Worldwide (distant learning) as an external student, rather than an internal student.*" This is a new matter which does not relate to the Request made on 26 January 2020 and so outside the scope of this Tribunal hearing.

34. We dismiss the appeal for the reasons explained above.

Signed: Hazel Oliver
Judge of the First-tier Tribunal

Date: 11 December 2021