



Neutral citation number: [2024] UKFTT 1167 (GRC)

Case Reference: FT/EA/2024/0109V

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

Decision given on: 09 January 2025

Before

**JUDGE A. MARKS CBE
MEMBER K. PEPPERELL
MEMBER M. SCOTT**

Between

PETER STEAD

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Representation:

For the Appellant: the Appellant represented himself

For the Respondent: Helen Wrighton, Solicitor

Decision: The appeal is dismissed.

REASONS

Introduction

1. This is an appeal against the Information Commissioner's decision notice IC-282929-F5J6 dated 5 March 2024 which held that, under section 22A of the Freedom of Information Act 2000 (FOIA), the University of York (the University) was entitled to withhold the requested information about a report entitled 'Safe to Speak Up?'
2. The reason was that the information was associated with an ongoing programme of research and disclosing it prematurely would be likely to prejudice the University's interests.
3. The Tribunal heard this appeal orally via HMCTS' Cloud Video Platform (CVP) on Friday 22 November 2024. The Appellant (PS) represented himself. The Commissioner neither attended nor was represented at the hearing.

The request for information, internal review and response

4. On 31 October 2023, PS emailed the University a request for information – the relevant extract of which is as follows:

"Please send me all of the materials you hold in connection with the report 'Safe to Speak Up?' by Dr Anna Bull.

However, please exclude the following:

- *Anything which may lead to the identities of the interviewees being exposed.*
- *The raw material of the interviewees' accounts to which the report makes reference."*

5. The University replied on 23 November 2023 confirming that it held information within scope of the request but considered it to be exempt from disclosure under section 22A FOIA. As that exemption is qualified, the University had then performed a public interest test and found the balance of the public interest weighed in favour of maintaining the exemption rather than disclosing the information. The University added that in due course, once the researchers had completed their programme of research and finalised findings, the published results would be available for external scrutiny. It was anticipated that publication would occur in late 2024 though that might change
6. On 26 November 2023, PS requested an internal review of the University's response.
7. On 22 December 2023, the University responded to PS that having reviewed its original decision, it maintained its position that disclosure of the requested information would prejudice its current interests. The public interest arguments in its original response remained applicable. Hence the University's decision to withhold the information under s.22A FOIA was upheld.

8. On 31 December 2023, PS complained to the Respondent (the Commissioner) about the way the University had dealt with his information request.

The Decision Notice

9. On 5 March 2024, the Commissioner issued his Decision Notice which in summary concluded that the exemption in s.22A FOIA was engaged. Further, the Decision Notice concluded that there was a greater public interest in withholding the information in this case than disclosing it. This was so the researcher could finish their programme of research to their planned timetable, away from distraction that could be caused by disclosing the information early, without context and in an incomplete state, which would potentially undermine the wider research programme.

Appeal to the Tribunal

10. On 26 March 2024, PS sent a Notice of Appeal to the Tribunal challenging the Commissioner's decision notice.
11. The basis of PS's appeal was that:
 - (a) As regards the public interest test, the decision notice gave great weight to incomplete, hollow and generic arguments by the University while giving little weight to PS's arguments.
 - (b) The decision notice failed to specify how release of the materials could actually prejudice or otherwise adversely affect the report or the programme of research of which it is a part.
 - (c) PS's request is for the underlying materials of the results which have already been published i.e. the "Safe to Speak Up?" report – not prematurely to obtain results from the rest of the ongoing programme of research.
 - (d) The arguments in favour of maintaining the exemption are brief, general and theoretical, barely touching on specific aspects of the report, the programme or the academic field in which it operates.
 - (e) Public interest arguments in favour of disclosure include:
 - i. the Safe to Speak Up? report relates the experiences of 18 interviewees, only one of whom is male: this is representative of neither the population at large nor the creative industries.
 - ii. the published Report's information about its methodology and limits of its study is very brief and offers no explanation why it included only one male victim, and no male victims of female perpetrators.
 - iii. the Report promotes the term 'himpathy' meaning excessive sympathy for male perpetrators. This precludes the existence of female perpetrators.
 - iv. because of the huge gender imbalance against men in the Report, it is in the public interest to examine the ethics process which justified this skewed sample, and discover whether the research was conducted with appropriate objectivity and academic standards.
 - v. the Decision Notice's suggestion that the complainant's concern is more focused on CIISA (a new standards authority for the creative industries)

- is incorrect: irrespective of the Report's connection to CIISA, there is a strong public interest in the underlying materials to understand more deeply the methodology and ethical practices of the research.
- vi. the Report's connection to CIISA is however relevant as the Report recommends supporting CIISA, the creation of which is a major step affecting hundreds of thousands of people working in the creative industries.
 - vii. like CIISA, the Report takes an 'intersectional' approach which perhaps led to its near total exclusion of male victims and complete exclusion of male victims of female perpetrators.
 - viii. CIISA plans to go live at the end of 2024, around the same time as the University says it will publish the full research. Ordinary industry practitioners will be bombarded with headlines about the research findings without the underlying information to properly scrutinise and challenge the methodology ahead of CIISA's launch.
 - ix. CIISA could well incorporate findings from the research into its processes, though the research may well turn out to have a slanted academic approach leading to slanted conclusions e.g. as to gender. This could encourage inherent bias in CIISA which could in turn lead to miscarriages of justice.
 - x. CIISA will reportedly have power to 'effectively blacklist' people or publicly accuse them. As a non-statutory regulator, it will be subject neither to FOIA nor The Regulator's Code, thus protecting people from unfairness.
 - xi. the public should be given access to as many materials as possible to raise potential flaws with CIISA in a timely manner and nip issues in the bud before CIISA starts adjudicating cases.
 - xii. the case officer approached the case in a hasty way e.g. citing s. 22(a) rather than s. 22A FOIA. She also failed to contact the complainant at any time before issuing the decision notice. This haste led to superficial and flawed understanding of the arguments in favour of disclosure, and superficial consideration of the public interest factors at play. For instance, there are no specific examples of the adverse affect on the research programme which would likely result from the release of the materials.

Commissioner's response to the appeal

12. The Commissioner replied on 7 May 2024 to PS's appeal. In summary, he stated that:

- (a) As regards the public interest arguments (Issue one):
 - i. the Commissioner understands that the design of the research had been reviewed by the University's ethics committee. This was done prior to recruitment of interviewees for the "Safe to Speak Up?" study.

- ii. during the Commissioner's investigation of PS's complaint, the University confirmed that the ethical review did not include any commentary on the sampling for the study.
 - iii. disclosure of any information relating to the involvement of the ethics committee would not appear to shed any light on PS's concerns about the Report's 'skewed sample'.
 - iv. the study itself did not aim to replicate previous large-scale surveys that outline the wider gendered patterns of experiences of sexual harassment. Instead, it aimed to explore in detail a subset of experiences of sexual harassment and reporting.
 - v. the Report itself clearly sets out the nature of its sample and its author's attempts to recruit a diverse pool of interviewees. It also specifically sets out the limitations of the sample in terms of the lack of diversity, and that the Report's findings should be read with that limitation in mind.
 - vi. PS could make his points to CIISA about the unrepresentative nature of the interviewees – and the impact on the Report and its recommendations – with a view to influencing CIISA's understanding and processes before it goes live, without sight of the requested information.
- (b) For the above reasons, the Commissioner submits that he did not exercise his discretion wrongly in concluding that the public interest test favours maintaining the exemption in s. 22A FOIA.
- (c) As for PS's complaints about the Commissioner's investigation and the procedures he adopted (Issue two), numerous previous decisions of the Tribunal confirm that:
- i. the FOIA appeal process is intended to provide relief only if the decision notice is found not to be in accordance with the law.
 - ii. where the appellant's complaint is about the conduct of the investigation and not the decision notice itself, the Tribunal has no jurisdiction.
 - iii. it is also not the Tribunal's role to conduct a procedural review of the Commissioner's decision-making process or to correct the drafting of the decision notice.
 - iv. the Tribunal's responsibility is to assess the outcome of the decision notice not the alleged absence of reasons for certain aspects of the decision, nor the procedures followed by the Commissioner such as contacting or not the appellant.
 - v. the Tribunal has no power to supervise the conduct of the Commissioner's investigation, nor for example withdraw the decision notice because the appellant alleges a fair process had not been adopted due to lack of fair opportunity to comment before the Commissioner made his findings.
 - vi. the Tribunal has no power to quash a decision notice on the basis of a procedural flaw in the Commissioner's processes.
- (d) For the above reasons, complaints about the Commissioner's investigation and processes do not fall within the Tribunal's remit.

PS's reply to the Commissioner's response

13. In his reply dated 12 May 2024, PS added to his previous submissions that:

- (a) Issue two does not need separate consideration: issue one is the only one of principle.
- (b) the ethics review is not the only information which could shed light on the research programme's design: the University listed numerous other materials within scope of the request.
- (c) the Commissioner mentioned only the gender imbalance of interviewees and not other relevant observations such as use of the word 'himpathy' and the Report's conclusion that 'Unsurprisingly, men are still engaging in sexual harassment and violence towards both their male and female colleagues'. Together these indicate a pattern which departs from academic norms by openly preferring the participation in the study of some groups over others.
- (d) the built-in slant means questions are still relevant as to the ethics review, even though it was conducted prior to the study.
- (e) the Methods and Limitations section of the Report does not explain why it greatly encouraged some groups to be interviewees over others. The Commissioner should not assume that everyone who volunteered to be interviewed was included in the Report.
- (f) the Commissioner should not assume that PS has not already contacted CIISA. He has in fact done so about the Report and a great many other things also.
- (g) a more fruitful and informed discussion could be had with CIISA if the methodology of the Report could be inspected and challenged in detail. It is extremely important that this opportunity is given when a body which will be very powerful may ignore swathes or victims and perpetrators as a result of the Report.
- (h) the Report and research will be massively amplified by its connection with CIISA which will create a seismic shift in the creative industries. This creates a commensurate increase in the public interest and consequently greater need for transparency with the requested materials.
- (i) neither the Commissioner nor the University have attended the hearing to make representations about the seriousness of the harms they imagine would be caused by the release of the requested information. This implies that the programme of research would not be harmed at all and therefore the requested material should be released in the public interest.

The Law

Section 1(1) FOIA: general right of access to information held by public authorities

Any person making a request 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 this is the case, to have that information communicated to him...

Section 22A FOIA: Research

(1) Information obtained in the course of, or derived from, a programme of research is exempt information if –

(a) the programme is continuing with a view to the publication, by a public authority or any other person, of a report of the research (whether or not including a statement of that information), and

(b) disclosure of the information under this Act before the date of publication would, or would be likely to, prejudice –

(i) the programme,

(ii) the interests of any individual participating in the programme,

(iii) the interests of the authority which holds the information, or

(iv) the interests of the authority mentioned in paragraph (a) (if it is a different authority from that which holds the information).

The role of the Tribunal

14. The powers of the Tribunal in determining appeals against the Commissioner's decisions for the purposes of FOIA are as follows:

s.57 Appeal against notices...

(a) Where a decision notice has been served, the complainant or the public authority may appeal to the Tribunal against the notice...

s.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.

Evidence

15. Prior to the hearing of this appeal on the papers, the parties had submitted an Open Bundle of 346 pages (including indices) which contained the parties' evidence and other materials.

16. At the oral hearing, PS in his submissions added:

Introduction

- (a) PS wants the requested information to understand the underlying design of the Report, not the programme.
- (b) The Report has already been published and subject to scrutiny: there was a public launch, and it was reported in the industry press so how would the research be prejudiced by disclosure?

The University's case against disclosure

- (c) The University's claim that disclosure would risk 'an incomplete picture of the research' would arise is vague and does not give examples of any negative impact.
- (d) The University also states that future publication of 'the results will be available for external scrutiny' but this misses the point that the results have not been requested, rather the underlying materials for the already published Report.
- (e) While the University says that 'premature release of information...could lead to valuable research ideas being copied and/or adapted by competitors', it is unclear how this would arise: the University does not claim novel research ideas.
- (f) The Commissioner's guidance suggests that the risk of harm by disclosure needs to be 'real and actual' and that there must be a 'causal link' between the harm and the disclosure. The University's claims are insufficiently specific and theoretical: no strong case has been made for 'prejudice' - in which case is s.22A engaged at all?
- (g) However, PS accepts that the Commissioner's guidance says that the exemption includes a wide range of information relating to the research project, including that which is not necessarily going to be published. Accordingly, there does not have to be any intention to publish the information that has been requested.
- (h) Nevertheless, PS says that information should only be withheld if it would (or would likely) prejudice a later part of the programme and how that would occur in this case has not been explained.

The Commissioner's arguments

- (i) The Commissioner's decision notice adds the doubtful proposition that PS 'seems' to be interested in CIISA while the Report makes only minimal reference to it. However, it is significant that the Report recommended the setting up of CIISA which the decision notice ignores.
- (j) Moreover, the decision notice assumes that PS seeks the information to 'shed light' on how CIISA was developed and associated roundtables - but that was not PS's motive: as the Commissioner acknowledged in the decision notice, PS had already sought and obtained information about that.
- (k) In any case, FOIA is 'motive blind' so the Commissioner should not speculate about that, wrongly exercised his discretion in doing so and misattributed PS's motive anyway.

PS's arguments on public interest

- (l) Concerns about the Report's unbalanced approach to gender enhances the public interest in disclosing the requested information. The Methods and Limitation section of the Report refers to recruiting participants 'by reaching out directly to minoritized groups and/or women in film and television'. This of course reduced the number of men in the sample and shows that the methodology prejudiced the results in terms of gender.
- (m) The Report states that its results are not 'generalisable' to the industry – and the Commissioner quotes this in the decision notice. However, throughout the Report there is heavy emphasis on men as perpetrators, not victims – yet the sample was slanted from the outset and unbalanced as regards men. For the methodology to prejudice the results is contrary to academic norms. Nevertheless, the Report has been used to generalise about the creative industries.

PS's case on public interest arising from links with CIISA

- (n) CIISA will affect approximately half a million people working in the creative industries – even more if the supply chains are taken into account. CIISA has no statutory power but its recommendations about allegations of bullying, harassment and discrimination will be made public, resulting in effective 'blacklisting' of those accused.
- (o) The relevance of the Report is the numerous links with CIISA which will amplify the impact of the Report, commensurately increasing the public interest in disclosure and the need for transparency.

Summary of PS's case on public interest

- (p) The Report was produced using public funds.
- (q) The study was academically flawed but will have real world impact on, for example, male victims of female perpetrators who may not be taken seriously and therefore not come forward to make complaints to CIISA. This has far-reaching consequences for other groups too. As a new standards authority, CIISA should protect everyone.
- (r) The University claims that its whole research programme would likely be undermined if the requested materials were disclosed. In that case, why did it not join this appeal? Or submit a closed bundle containing the requested materials so that the Tribunal could judge for itself?
- (s) The University could release some materials but not others: there could be a compromise with PS about this.
- (t) This case is unique so would not set any precedent which would damage future application of s.22A FOIA.
- (u) ICO should have looked at these arguments more closely when exercising its discretion.

Usefulness of the materials requested

- (v) The University has given no explanation for the gendered slant of the research, reflected in the Report. Why did the ethics process not look at this?
- (w) The kinds of questions PS has are:

- i. Why has the Commissioner assumed that all volunteers as interviewees were included in the Report?
 - ii. Did any men apply who were eliminated?
 - iii. How much did the Report cost?
 - iv. As it departed from academic norms, did it provide good value for money?
 - v. To what extent did the researcher's own prior views influence the research?
 - vi. Is 'himpathy' a valid social phenomenon?
 - vii. 'Intersectionality' is not fully explained: do women under-report so the Report tries to offset that? The Report could, if true, say that women under-report compared with men but it does not.
 - viii. The Methods and Limitation section of the Report contains just a one sentence disclaimer on the issue of gender imbalance in the Report's total 93 pages. The approach taken to finding volunteer interviewees reduced the number of males in the sample.
- (x) A major benefit of the material being disclosed would be to challenge the Report to CIISA with a view to informing its approach to adjudication processes **before** they are implemented, rather than afterwards.
- (y) PS is not asking for the raw testimony of interviewees but the architecture and design of the Report and its academic approach.

Discussion

The facts

17. The panel first considered the relevant facts of this case. Based on all the evidence provided, the panel made the following findings of fact on the balance of probabilities. Those findings shown in bold are disputed: the panel's reasoning for each such finding is set out below the bold text.

- (a) The information the University holds within the scope of the request is:
- i. Funding proposal:
 - Versions before and after feedback.
 - ii. Ethics documentation:
 - Data Protection Impact Assessment;
 - Ethical review application to the Department of Education;
 - Information and consent forms for interviewees;
 - Risk assessment;
 - All the above documentation revised following feedback from the Dept of Education ethics committee and Data Protection team.
 - iii. Data collection documentation:
 - Interview schedules;
 - Pre- and post-interview information and debrief;
 - Materials relating to recruitment of participants (including social media, website materials; list of organisations to contact).

- iv. Literature review notes.
- v. Presentations.
- vi. Data analysis.
- vii. Interview transcripts (NB the University does not have permission from interviewees to share these, even in pseudonymised form).
- viii. Report drafts.
- ix. Industry and policy briefing drafts.

- (b) None of this information has been disclosed to PS or the Tribunal.
- (c) PS has repeatedly stated that he does not require disclosure of item vii. (interview transcripts).
- (d) The University does not intend to publish all the above information.
- (e) The programme of research is ongoing.
- (f) The author of the Report intends to publish further reports relating to the research in late 2024 and possibly beyond. These outputs will likely include elements of the information requested e.g. literature reviews, data analysis. It will not include data such as raw data obtained from research participants.
- (g) Further steps in the research still to take place at the date of the request included not just further academic publications but also a peer review process.
- (h) The peer review process is important because it enables the proper analysis and academic commentary of the research to be scrutinised through a process of internal review and then external peer review to ensure proper academic rigour is maintained, and that maximum value is achieved from the public investment.
- (i) **Premature release of information about the study could lead to valuable research ideas being copied and/or adapted by competitors.** The panel's reasoning for this finding is:
 - i. The University has said – and the panel has no reason to doubt its bona fides or integrity in this or any other respect – that while some information relating to the research objectives, design and methodology was published as part of the 'Safe to Speak Up?' report, disclosure was carefully controlled to ensure nothing that would undermine the current research workstreams was put in the public domain.
 - ii. The panel does not accept PS's argument that, for s.22A FOIA to be engaged, the public authority must give specific examples of the adverse effect on the research programme which would likely result from the release of the materials.
 - iii. The panel considers it would be almost if not completely impossible credibly to identify what ideas might be copied and/or adapted and/or exactly by which competitors.
 - iv. Instead, the panel considers that for the s.22A exemption to be engaged, the public authority must identify who or what would be likely to be prejudiced and why. In this case, the panel is satisfied that this is what

the University did by identifying **its own interests** as being potentially damaged (as well as the research programme) and the reasons for this.

- v. The panel is supported in this view by the Commissioner's guidance on the s.22A exemption which states 'the prejudice in this exemption is very wide and only specifies whose "interests" would need to be prejudiced by early disclosure of the information, not what those interests are'.
- vi. The guidance also says that 'so long as the research programme continues, the exemption may apply to the information if there is an intention for a report of the outcome to be published at some point in the future.' In this case it is clear that further academic outputs of the research are intended to be published.
- vii. Moreover, the guidance adds that the above is the case 'even if a report has already been published about a particular aspect of the same research programme.' That is clearly the position here - so the fact that the 'Safe to Speak Up?' report has already been published does not undermine the risks of prejudice to the remainder of the research programme or to the interests of the University itself.
- viii. The panel considers that the University's interests would likely be prejudiced were it to disclose information before the conclusion of this programme of research because:
 - a) disclosure would likely undermine not only the integrity of the research itself but also of the **researcher**; and
 - b) this in turn would likely be detrimental to the relationship of trust between the University and not just this researcher but future researchers at the University too.

Error of law or wrongful exercise of discretion

Is there an error of law in the Commissioner's decision notice?

18. Having made the above findings of fact, the remaining issues for the panel in this appeal were (a) whether the decision notice was not in accordance with the law and (b) to the extent that the notice involved an exercise of discretion by the Commissioner, whether he ought to have exercised his discretion differently.
19. PS does not suggest there is any error of law as such in the decision notice, but he challenges the Commissioner's conclusion that the exemption in s.22A was engaged.
20. The basis of this challenge appears to be that no specific adverse effect of disclosure has been identified - and thus the requirement for prejudice which is 'real, actual or of substance' has not been met - nor has the Commissioner articulated a causal link between the disclosure and the prejudice claimed.
21. The panel does not accept this challenge is made out. In the panel's judgment, the Commissioner was entitled to accept that the prejudice claimed by the University of premature disclosure was the risk of copying and/or adaptation of research ideas by

competitors as being real and of substance, even if those risks were non-specific and theoretical.

22. While the panel accepts that the prejudice in this case was, at the time of the response to the request, theoretical rather than actual, in the panel's view that did not undermine the clear causal link between disclosure and prejudice nor the likelihood of that prejudice occurring nor the substantial impact on the University's interests were it to occur.
23. Further, the panel does not accept PS's suggestions that the University could disclose **some** information falling within the scope of the request while withholding the rest of it. The panel's reasoning is that:
 - (a) there is no evidence that the materials PS describes as 'underlying...the results which have already been published...' in the Report are separable from the materials which underlie the ongoing programme of research; and
 - (b) once the s.22A exemption applies (and the requisite public interest test is met) a public authority cannot 'cherry pick' some information to disclose and not other information: the exemption applies to it all.
24. The Tribunal does not have power to provide a compromise solution or to encourage the parties to negotiate.

Did the Commissioner wrongfully exercise his discretion?

25. PS also challenges the Commissioner's exercise of his discretion in the way he handled PS's complaint.
26. The panel is of the view that the Tribunal's jurisdiction under s.58 FOIA is limited to the exercise of the Commissioner's discretion in the context of the decision notice itself. As a result, s.58 FOIA does not cover concerns about the way in which the Commissioner investigated or otherwise handled an appellant's complaint about a public authority's handling of a FOIA request.
27. However, the panel accepts that s.58 FOIA does confer power to consider whether the Commissioner ought to have exercised his discretion differently in balancing the public interests in disclosing the information on the one hand and maintaining the exemption in s.22A FOIA on the other.
28. The panel therefore went onto consider whether the public interest balancing test which the Commissioner conducted in relation to the exemption in s.22A FOIA should have been exercised differently.
29. As the Commissioners' guidance on this exemption sets out, a key factor when considering the public interest balance in relation to s.22A FOIA is the final publication date: "the public interest in releasing the information will often be stronger if the publication date is far in the future or where it isn't set".

30. The guidance goes on to say that the timing of the disclosure is often the main factor of which the public authority must take account when considering the public interest in maintaining the exemption.
31. In this case, the researcher and thus the University estimated that the programme of research would conclude around the end of 2024, about a year after the information request was made. The panel does not consider the conclusion of the research programme in this case to have been 'far into the future' when the University was considering its response to the request.
32. The panel understands that PS considers there to be some urgency to his request given the imminent intended launch of CIISA also around the end of 2024 or early 2025. However, as PS himself says, FOIA is blind to motive and therefore the panel has considered this issue only in terms of any impact this expected launch of CIISA might have on the balance of the public interest.
33. The panel has carefully considered PS's public interest arguments, in particular:
- (a) As mentioned above, the imminent launch of CIISA, given the links in the Report to CIISA and its recommendation of supporting CIISA. PS argues this gives rise to concerns that:
 - i. the gender bias in the Report (assuming predominantly female victims and predominantly male perpetrators), could encourage inherent bias in CIISA's processes: this could in turn lead to miscarriages of justice – especially given reports of CIISA's 'effective blacklisting' power – and also discourage male victims from coming forward;
 - ii. given CIISA will affect at least half a million people working in the creative industries, CIISA's launch will amplify the Report's findings;
 - iii. the size of the workforce affected by CIISA commensurately increases the public interest in disclosure and need for transparency; and
 - iv. the end of the programme of research coinciding with the launch of CIISA will reduce the public's opportunity to scrutinise and challenge the methodology of the research, and thus the public's timely ability to raise potential flaws with CIISA and nip issues in the bud before CIISA starts adjudicating cases.
 - (b) The Report is based on a biased sample of interviewees (only one out of eighteen being male) with no adequate explanation for this. The consequent gendered slant of the Report:
 - i. appears not to have been considered by the University's ethics process;
 - ii. seems inconsistent with academic norms;
 - iii. may reflect the researcher's own prior views;

- iv. is demonstrated by its use of the terms 'himpathy' and 'intersectionality' which are not fully explained;
- v. is addressed in just one sentence in the Methods and Limitation section of the Report;
- vi. resulted from the approach at the outset of the research to finding volunteer interviewees, and perhaps selecting from amongst those volunteers who would actually be interviewed for the Report

all of which could be examined by the public were the requested materials to be disclosed.

- (c) Had the University been seriously concerned that its interests and the whole research programme would likely be prejudiced if the requested materials were disclosed, it could have joined the appeal fully to explain such concerns.

34. The University, on the other hand, in addition to its arguments that its own interests would likely be prejudiced by disclosure also argued that there is a very strong public interest in:

- (a) allowing researchers to complete their programme of research and finalise their findings before the programme is subjected to external scrutiny;
- (b) allowing time and space for research findings to be tested by peer review, and for the final research reports to be prepared for publication;
- (c) minimising the risk that an incomplete picture of the research, lacking relevant context and explanation, would arise if information were published whilst the research is ongoing;
- (d) reducing the potentially negative impact of disclosure on the usefulness of the research being undertaken; and
- (e) enabling academics who work in a competitive environment, competing for limited funding and working hard to identify novel areas for research, to be recognised as contributing research that is 'world-class, dynamic and responsive' for the purposes of the Research Excellence Framework, the UK's system for assessing the quality of research in UK higher education institutions.

35. The panel does not consider that the weight of any of these arguments is reduced by the fact that the University chose not to join this appeal.


36. After careful consideration of the above arguments respectively in favour of disclosure of the requested material and in maintaining the exemption in s. 22A FOIA, the panel considers that the latter outweigh the former - both individually and collectively. In reaching this conclusion, the panel particularly bore in mind the timings in this case, namely the imminence of the end of the programme of research of which the Report is

part, and the researcher's and University's stated intention to publish other academic outputs by the end of 2024 or shortly beyond.

Conclusion

37. For the above reasons, the panel finds that the Commissioner's decision notice did not involve any error of law nor any wrongful exercise of his discretion within the meaning of s.58 FOIA.

38. Accordingly, this appeal is dismissed.

Signed: 

Date: 30 December 2024

Alexandra Marks CBE
(sitting as a First-tier Tribunal Judge)