

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 July 2012

Public Authority: The London School of Economics and Political Science

Address: Houghton Street
London
WC2A 2AE

Decision (including any steps ordered)

1. The complainant has requested information about the internal disciplinary hearing of a member of academic staff at the London School of Economics and Political Science (the "LSE"). The LSE disclosed some information, but withheld the remaining information under the third party personal information exemption [sections 40(2) and 40(3)(a)(i)].
2. The Commissioner's decision is that the LSE has correctly relied upon sections 40(2) and 40(3)(a)(i) to withhold most of the outstanding information. However, in relation to one of the requests the Commissioner considers that this exemption does not apply.
3. Therefore the Commissioner requires that LSE to take the following steps to ensure compliance with the legislation:
 - The LSE must confirm or deny whether it holds any information that falls under request (20); and
 - Communicate the information it holds under request 20 to the complainant and/or issue a refusal notice in respect of all or the parts of the information it intends to withhold in accordance with section 17 of the FOIA.
4. The LSE must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. In May 2011 a member of the academic staff at the LSE, Dr Satoshi Kanazawa, posted a blog entitled, *"Why are black women less physically attractive than other women."* This blog posting attracted a large amount of complaints, and resulted in the LSE carrying out an internal disciplinary inquiry into the actions of the author. A summary of the findings of this internal inquiry were published by the LSE, along with a letter of apology from Dr Kanazawa. The full summary can be found on the LSE's website at:
<http://www2.lse.ac.uk/newsAndMedia/news/archives/2011/09/Kanazawa.aspx>
6. On 8 October 2011 the complainant wrote to the LSE and made the following requests:
 1. *On what date did the internal review and formal disciplinary hearing into Dr Satoshi Kanazawa's blog posting ('Why are black women less physically attractive than other women?') convene?*
 2. *On what date did the internal review and formal disciplinary hearing into Dr Satoshi Kanazawa's blog posting ('Why are black women less physically attractive than other women?') complete its findings?*
 3. *Please specify the names, posts held, academic field and institutional affiliations of all persons who were part of the LSE internal investigation into Dr Kanazawa's blog posting.*
 4. *Please provide a full bibliography of all publications of all persons (referred to in 3) which were submitted under their names as part of the Research Assessment Exercise 2008 (RAE 2008).*
 5. *During the internal review were any publications of Dr Satoshi Kanazawa other than 'Why are black women less physically attractive than other women?' subjected to scrutiny and censure and cited against him? If yes, please provide full biographical data of any articles so used and full comments made by the Internal Review.*
 6. *Did the internal review accept any written or oral submissions from current LSE students (alumni and alumnae) and academics? If yes, please provide full details of the submissions.*

7. *Did the internal review accept any written or oral submissions from students not studying at LSE or from academics not employed by LSE? If yes, please provide full details of the submissions.*
8. *Was Dr Satoshi Kanazawa legally represented during the internal review?*
9. *In the Internal Review it stated that 'some of the arguments used in the publication ('Why are black women less physically attractive than other women?') were flawed and not supported by evidence'. Please list the arguments used in the publication which, in the opinion of the Internal Review, were flawed and not supported by evidence.*
10. *Where in Dr Satoshi Kanazawa's article ('Why are black women less physically attractive than other women?') does he fail to give due consideration to his approach and audience? Please specify.*
11. *Is it the view of the Internal Review that LSE scholars are obliged to censor, to withhold, or to modify the results of their research so that certain racial groups are not offended or flattered?*
12. *What definition of race did the LSE Internal Review employ in its deliberations on the work of Dr Satoshi Kanazawa?*
13. *Please provide a full copy of the internal complaint made against Dr Satoshi Kanazawa by LSE which served as the basis of initiating the Internal Review and any responses thereto submitted by Dr Satoshi Kanazawa.*
14. *The Findings of Internal Review and Disciplinary Hearing published on the LSE web site is an abstract summary of the full internal report prepared by the Internal Review. Please provide me with a full, uncensored copy of the internal report.*
15. *As a consequence of the Internal Review has LSE drawn up a set of guidelines, or intends to do so, on how to deal with, amongst other things, race and race-related themes, which will be made available to members of LSE's academic and research staff? If yes, please provide me with a full, unedited/uncensored copy of these guidelines. If these guidelines are not yet ready, when will they be ready? Please indicate a provisional date.*
16. *In the Internal Review it is claimed that: 'It was the opinion of the hearing that the publication of the article had brought the*

School into disrepute' and that Dr Kanazawa accepted that the article had damaged the School's reputation. Where, according to the Internal Review and LSE, is the evidence that Dr Kanazawa's article had 'brought the School into disrepute'?

17. *What were 'the assertions put forward in the blog post' which 'were flawed and would have benefited from more rigorous academic scrutiny'? Please specify.*
18. *'It was the opinion of the hearing that the publication of the article had brought the School into disrepute'. Please specify the assumptions, approach and statistical methodology employed by the hearing (Internal Review) in arriving at the opinion 'that the publication of the article had brought the School into disrepute'.*
19. *In the Internal Review it is noted that Dr Kanazawa accepted that the article had damaged the School's reputation. Does the Internal Review agree with Dr Kanazawa? What is the basis for accepting Dr Kanazawa's claim that his article had damaged the School's reputation?*
20. *What, at the time when Dr Satoshi Kanazawa published his article ('Why are black women less physically attractive than other women?') in May 2011, were the LSE guidelines, if any, issued to academic staff concerning the publication of articles on non-peer reviewed outlets both electronic and hard copy? Please provide a copy of these guidelines.*
21. *Since Dr Satoshi Kanazawa published his article ('Why are black women less physically attractive than other women?') in May 2011 have the LSE guidelines, if any, issued to academic staff concerning the publication of articles on non-peer reviewed outlets both electronic and hard copy been amended? If yes, please provide a copy of these amended guidelines, with the amendments indicated.*
22. *Disciplinary measures – some of them – taken against Dr Satoshi Kanazawa are specified in the Internal Review. Please specify all the disciplinary measures taken against Dr Satoshi Kanazawa.*
23. *In the Internal Review it is stated that Dr Satoshi Kanazawa 'will not be teaching any compulsory courses in the School for this academic year'. Please specify all the 'compulsory courses in the School' that Dr Satoshi Kanazawa would normally have taught in this academic year (2011-2012) but will now not be teaching.*

24. *Why was the decision taken not to allow Dr Satoshi Kanazawa to teach any compulsory courses in the School for this academic year (2011-2012)?*
25. *What teaching duties, if any, will Dr Satoshi Kanazawa be required to discharge over this academic year (2011-2012)?*
26. *What research obligations, if any, will Dr Satoshi Kanazawa be required to discharge over this academic year (2011-2012)?*
27. *If Dr Satoshi Kanazawa does have research duties over the year (2011 – 2012) is his work to be subject to any kind of internal LSE prior-publication review before the work is passed on to any external outlet for publication?*
28. *If such an internal LSE prior-publication review body is to be established, or has already been established by LSE, with the aim of reviewing Dr Satoshi Kanazawa's work before submission for publication, please provide full details of all members of this review body and the terms of reference and procedures which shall govern its behaviour.*
29. *What administrative duties, if any, will Dr Satoshi Kanazawa be required to discharge over this academic year (2011-2012)?*
30. *Was Dr Satoshi Kanazawa's apology a disciplinary measure imposed on him by the hearing?*
31. *Was the withdrawal of further disciplinary measures against Dr Satoshi Kanazawa conditional on his providing such an apology?*
32. *Did Dr Satoshi Kanazawa write the apology himself or what is drafted for him?*
33. *Do any of the disciplinary or rehabilitation measures taken against Dr Satoshi Kanazawa stipulate that he be required to attend any courses of indoctrination, sensitivity training or re-education designed to promote, to encourage and to instil acceptance of multiculturalism/multiracialism and to free him from any incorrect attitudes to black women and other racial groups?*
34. *In the formal complaint made by LSE against and during the investigation itself were any provisions of the Race Relations (Amendment) Act 2000 used against Dr Satoshi Kanazawa? If yes, please cite all parts of the Act used against Dr Satoshi Kanazawa during the investigation."*

7. For ease of reference these will be referred to as requests (1) to (34) throughout this notice.
8. On 28 October 2011 the LSE responded, and disclosed information in relation to requests (2), (3), (15), (21), (23), (25), (26) and (29). However, it refused to provide information in relation to requests (3) to (14), (16) to (20), (22), (24), (27), (28), and (30) to (34), stating that this information was sensitive personal data and as such was exempt under section 40. The complainant requested an internal review of this decision.
9. The LSE carried out an internal review, and sent the complainant the outcome on 6 February 2012. In this it upheld its previous decision to withhold any information in relation to requests (3) to (14), (16) to (20), (22), (24), (27), (28), and (30) to (34), stating that this information was exempt under section 40.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his request for information had been handled. In particular, he complained about the LSE's use of section 40(2) to withhold information in relation to requests (3) to (14), (16) to (20), (22), (24), (27), (28), and (30) to (34). In addition to this, he also stated that he required further clarification as to the LSE's position in relation to requests (1), (21), (23), (25) and (29).
11. During the investigation the LSE provided the Commissioner with further clarification in relation to requests (1), (21), (23), (25) and (29).
12. Therefore, this notice only considers the LSE's use of section 40(2) to withhold information in relation to requests (3) to (14), (16) to (20), (22), (24), (27), (28), and (30) to (34).

Reasons for decision

13. Section 40(2) provides an exemption for information which is the personal information of an individual other than the applicant, and where one of the conditions listed in sections 40(3) or 40(4) is satisfied.
14. In this case the relevant condition is contained in section 40(3)(a)(i). This applies where the disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act 1998 (the "DPA"). This is an absolute exemption, and is therefore not subject to a public interest test.

15. The LSE has sought to rely upon this exemption to withhold any information that it holds that falls under requests (3) to (14), (16) to (20), (22), (24), (27), (28), and (30) to (34). It has argued that the disclosure of this information would be unfair, and therefore contravene of the first principle of the DPA.
16. In order to establish whether this exemption has been correctly applied the Commissioner has first considered whether the withheld information is the personal data of a third party or parties, namely Dr Kanazawa or the persons who took part in the LSE internal investigation into the publication of the blog in question.
17. Personal data is defined in the DPA as information about a living individual who can be identified from that information, or from that information and other information in the possession of, or likely to come into the possession of, the data controller.
18. In relation to request (20) the Commissioner notes that this request focuses on establishing whether, at the time of the publication of the blog, the LSE had issued guidelines to its academic staff concerning the publication of articles on non-peer reviewed outlets, and (if they were held) to be provided with a copy of those guidelines.
19. Taking into account the details of this request, the Commissioner does not consider that any information held by the LSE that would fall under this request would be the personal data of any third party. Therefore, this exemption does not apply to any information held by the LSE that will fall under request (20).
20. In relation to the requests (5) to (14), (16) to (19), (22), (24), (27), (28), and (30) to (34), the Commissioner is satisfied that any information that was held by the LSE that would fall under these requests would clearly relate to Dr Kanazawa, and would be about that individual. Therefore, the Commissioner is satisfied that any information that was held that would fall under these requests is the personal data of Dr Kanazawa.
21. In relation to requests (3) and (4) given that these requests are for the names of those involved in the LSE's investigation, together with a full bibliography of the publications written by these individuals, the Commissioner is satisfied that this information is the personal data of those individuals.
22. The Commissioner has gone on to consider whether the disclosure of this information would be in breach of the first principle of the DPA.
23. The first principle requires, amongst other things, that personal data is processed fairly and lawfully. The Commissioner has first considered whether the disclosure of the withheld information would be fair.

24. In considering whether disclosure of this information would be fair the Commissioner has taken the following factors into account:
- whether disclosure would cause any unnecessary or unjustified damage or distress to the individual concerned;
 - the individual's reasonable expectations of what would happen to their information; and
 - are the legitimate interests of the public sufficient to justify any negative impact to the rights and freedoms of the individuals concerned.
25. The Commissioner has first considered whether the disclosure of the information relating to Dr Kanazawa would be unfair.

Information relating to Dr Kanazawa

26. The LSE has pointed out that these requests relate to an internal disciplinary case, and that Dr Kanazawa had every expectation that the details of this matter would remain confidential. It has also pointed out that Dr Kanazawa is not a senior member of the academic staff and has no direct control over how public money is spent. It accepted that it had taken the unusual step of releasing a summary of this case, along with the letter of apology written by Dr Kanazawa, but argued that this showed its recognition of the obvious public interest in the case, and the balance it had tried to reach in satisfying this public interest whilst protecting the privacy of the individual concerned. It argued that disclosing further information about this issue would be likely to cause damage and distress to Dr Kanazawa. During the course of the investigation the LSE also informed the Commissioner that Dr Kanazawa had objected to the disclosure of further information about this issue. Finally, it also pointed out that Dr Kanazawa has not taken any steps to make any further information about this disciplinary hearing public himself.
27. The complainant has disputed that the disclosure of the requested information would have any negative effect on Dr Kanazawa. He has also argued that, "the way academics in a publicly funded institution are disciplined, especially as the case concerns free speech, the pursuit of knowledge and academic freedom, is a matter of overwhelming public interest." He has raised concerns over the conduct of the inquiry, and questioned its legitimacy and whether it showed bias. He has also questioned the legitimacy of the complaints made against Dr Kanazawa. As such he considers that there is a strong interest in increasing the transparency of these events, and in particular the evidence upon which the inquiry reached its findings. He also considers that the disclosure of some of the requested information is necessary to ensure that Dr

Kanazawa was not subjected to undue, improper or disproportionate sanctions.

28. The Commissioner is unable to detail the contents of the withheld information in this notice, without potentially disclosing details of that information. However, he considers that whilst this information relates to Dr Kanazawa's professional life, a disciplinary process such as this would also quite clearly have a direct affect on his personal life. Therefore he considers that the withheld information relates to both the professional and personal life of Dr Kanazawa.
29. Taking into account the nature of this disciplinary inquiry, and the negative nature of its findings against Dr Kanazawa, the Commissioner considers that the disclosure of this additional information would be likely to cause damage or distress to the individual concerned. Although he accepts that some information has been published by the LSE, given the nature of the events that led to the inquiry and the published details of its findings, he considers that the disclosure of more detailed information would have a potentially damaging effect on the individual's professional reputation, and may damage his future career. He also considers that it would be likely that this would also have a damaging effect on his private life.
30. In relation to the reasonable expectations of Dr Kanazawa, although the Commissioner notes that the LSE has published some details of the internal disciplinary inquiry (and its outcome), he also notes that this information is only in the form of a summary, and clearly does not contain the full details of what was discussed and concluded. He notes the LSE's comments that the publication of this information was an unusual step, and having considered the withheld information he is satisfied that those involved in this process would have expected that the inquiry was of a confidential nature.
31. The Commissioner also considers that it is not general practice for the full details of internal disciplinary inquiries into the actions of public authority employees to be made fully public – although he accepts that some information may be disclosed depending on the seniority of the individual concerned, their role, or the circumstances of the events that led to the inquiry.
32. The Commissioner also notes the LSE's point that Dr Kanazawa has not taken any steps to make any further information about this disciplinary hearing public himself.
33. Bearing these points in mind, the Commissioner is satisfied that it is unlikely that Dr Kanazawa would have had any reasonable expectation that the withheld information would be disclosed under the FOIA when he was involved in this disciplinary process.

34. Taking into account the potential impact that the disciplinary inquiry's findings would have on Dr Kanazawa's professional and personal life, and his reasonable expectations, the Commissioner considers that the disclosure of this information would be an invasion of his privacy.
35. In relation to the legitimate interests in disclosure of this information, the Commissioner has noted the complainant's comments as to why he considers that this information should be disclosed.
36. The Commissioner notes that the events leading up to the inquiry were controversial, and attracted public and media interest and debate. As such, he considers that there is a legitimate interest in increasing the transparency of the actions of the LSE in investigating these matters, and in understanding further the conclusions of the disciplinary hearing.
37. However, these legitimate interests have to be balanced against any negative impact to the rights and freedoms of the individual concerned. Bearing in mind his findings that the disclosure of this information would be likely to have a damaging effect on Dr Kanazawa's personal and professional life, and taking into account the reasonable expectations of Dr Kanazawa, the Commissioner finds the arguments in favour of withholding this information particularly weighty.
38. In addition to this, although he has noted that there is a legitimate interest in increasing the transparency of the actions of the LSE and the disciplinary hearing, he considers that this has been somewhat met by the information that the LSE has put into the public domain by way of the published summary.
39. Taking all these factors into account, the Commissioner considers that the disclosure of this information would be unfair and in breach of the first principle of the DPA.
40. Therefore his decision is that the LSE correctly relied upon sections 40(2) with 40(3)(a)(i) to withhold this information.

Information relating to other third parties

41. In relation to the names of the individuals who were involved in the internal investigation into Dr Kanazawa's actions, the Commissioner notes that the blog posting attracted a significant amount of controversy. The posting, together with the subsequent actions of the LSE, also attracted a lot of public and media attention. Bearing this in mind, the Commissioner considers that there was a risk that, were their identities to be disclosed in this context, those involved in the disciplinary hearing would be contacted by the media, or by parties who were unhappy with the outcome of the disciplinary hearing.

42. Given the confidential nature of the disciplinary hearing, the Commissioner is also satisfied that it would have been unlikely that these individuals would have had any reasonable expectation that this information would be disclosable under the FOIA.
43. Taking all these factors into account, the Commissioner considers that the disclosure of this information would be an invasion of the privacy of these individuals.
44. In relation to the legitimate interests in disclosure of this information, the complainant has argued that the disclosure of this information is necessary in order to judge the competence of those who took part in this inquiry.
45. The Commissioner considers that there is a public interest in increasing the transparency of the actions of the LSE and the disciplinary hearing.
46. However, these legitimate interests have to be balanced against any negative impact to the rights and freedoms of the individuals concerned. Taking into account his findings that the disclosure of this information would be an invasion of the privacy of these individuals, the Commissioner finds the arguments in favour of withholding this information particularly weighty.
47. Taking all these factors into account, the Commissioner considers that the disclosure of this information would be unfair. Therefore the names of the individuals who were involved in the internal investigation are exempt from disclosure under sections 40(2) with 40(3)(a)(i).

Right of appeal

48. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

49. 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.

50. 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

Pamela Clements
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