

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 June 2016

Public Authority: Trinity Hall Cambridge
Address: Cambridge
CB2 1TJ

Decision (including any steps ordered)

1. The complainant requested various information from Trinity Hall in connection with a benefaction made to it by a private benefactor. Trinity Hall withheld the requested information in its entirety citing sections 40(2) and 43(2) of the FOIA.
2. The Commissioner's decision is that Trinity Hall correctly applied section 40(2) of the FOIA.
3. The Commissioner does not require Trinity Hall to take any steps to ensure compliance with the legislation.

Request and response

4. On 9 July 2015 the complainant wrote to Trinity Hall and requested information in the following terms:

'I would like to request from you the following information to assist with my possible appeal by 20 July.

1. *The contact between Trinity Hall and the Avery benefactor (or its representatives) regarding the benefactions we discussed at the hearing on 30 April¹*

¹ This is a reference to the hearing of the First-Tier Tribunal appeal of Bryce, the Information Commissioner and Trinity Hall EA/2014/0086 on 30 April 2015.

2. *The annual or any other reports from Trinity Hall to the benefactor (whatever reports there may be) covering financial information and could you tell us what report you prepare*
3. *Anything else shedding light on these documents or the way the college handles the Avery benefaction relating to THA*
4. *Your correspondence with (name redacted) of the ICO and any related materials for my information request to Trinity Hall of 22 May, 2014 which received no response.'*
5. Trinity Hall responded on or about 13 July 2015 and stated it was withholding the information requested in questions 1 to 3 as it was exempt from disclosure under section 40 of the FOIA. It did however provide the complainant with some links on its website relating to general information on donations.

On 24 July 2015 the complainant requested an internal review.

Scope of the case

6. The complainant contacted the Commissioner at the end August 2015 to complain about the way her request for information had been handled. In particular, she complained that Trinity Hall had failed to respond to her internal review request dated 24 July 2015.

On 24 July 2015 the complainant requested an internal review.

Background

7. The benefaction referenced in the complainant's request is described in some detail in the decision of the First Tier Tribunal in the case of Bryce, the Information Commissioner and Trinity Hall EA/2014/0086 on 30 April 2015. In paragraph 9 of the decision states;
 8. 'In 2003/2004, a generous benefactor, Dennis Avery², made two large financial gifts. One gift was, in effect, to pay the College to provide
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[http://www.informationtribunal.gov.uk/DBFiles/Decision/i1393/Bryce,%20Debbie%20EA.2014.0086%20\(08.10.14\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1393/Bryce,%20Debbie%20EA.2014.0086%20(08.10.14).pdf)

² Now deceased

secretarial support to THA³. The second gift was to THA directly, which chose to have the investment managed by the College, where the endowment is ring-fenced, with dividends paid to THA'.

Chronology

9. The Commissioner contacted the complainant on 15 October 2015 and asked her whether she would be prepared to restrict the scope of her complaint to questions 1, 2 and 3 of her request. The complainant responded on 19 October 2015 and agreed to this.
10. On 20 October 2015 the Commissioner contacted Trinity Hall and requested copies of all the recorded information falling within the scope of the complainant's request together with clarification as to which exemptions it wished to apply and to which parts and why.
11. Trinity Hall responded on 9 December 2015. In relation to questions 1 and 2 of the request, Trinity Hall stated that it did not hold any recorded information. In relation to questions 3, it provided a schedule and eight pieces of correspondence (comprising of emails and letters from October 2003 and May 2004) falling within the scope of the request which it said it was withholding in its entirety under sections 40(2) and 43(2) of the FOIA. Trinity Hall also pointed out that it had held a further three emails dating back to October 2003 but these were no longer held in a recorded format. It also stated that a letter referred to in one of the pieces of correspondence and a spreadsheet referred to in another one were no longer held in a recorded format. In other words, Trinity Hall acknowledged that there were thirteen documents falling within the scope of question 3 of the complainant's request but only eight were still held in a recorded format.
12. On 11 December 2015, the Commissioner informed the complainant that Trinity Hall has stated it only held recorded information in relation to question 3 of her request which it was withholding under sections 40(2) and 43(2) of the FOIA.
13. The complainant responded on 12 December 2015 stating she was surprised by Trinity Hall's statement that it did not hold any recorded information falling within the scope of questions 1 and 2 of her request and gave reasons to support her view.

³ Trinity Hall Association

14. The Commissioner contacted Trinity Hall again on 14 December 2015 and provided it with the reasons why the complainant believed it should hold recorded information falling within the scope of the first two questions of her request. The Commissioner therefore invited Trinity Hall to provide him with details of the searches and enquiries it carried out to identify and locate information falling within the scope of the complainant's request, particularly in respect of questions 1 and 2.
15. Trinity Hall responded on 18 December 2015 and reiterated it had provided the Commissioner with all the recorded information it held falling within the scope of the complainant's request.
16. Trinity Hall wrote to the Commissioner again on 15 January 2016 explaining that the Bursar's PA had met with the College's Development Director to review the records held by its Alumni and Development Office. It also said that it had been in contact with the benefactor's wife (the surviving donor). Trinity College reiterated that the only information within the scope of the complainant's request was that held electronically on the Alumni and Development Office's data base. It also confirmed that the original paperwork of the documents held electronically had since been destroyed in line with Trinity Hall's usual practice.
17. Trinity Hall also stated that it had contacted the benefactor's wife who made it clear that she didn't want any information to be made public in relation to the benefaction which was made through a private foundation.
18. The complainant wrote to the Commissioner on a number of occasions during January 2016 and subsequently with suggestions as to what further information she felt should exist in relation to her request.
19. The Commissioner wrote to the Trinity Hall again on 27 January 2016 and asked it to confirm that it had made enquiries about and searches in relation to the following 9 specific items;
 1. All relevant correspondence.
 2. The minutes of any meetings about the contract, endowment, finances, etc.
 3. Trinity Hall and THA share a joint current account (which is stated in THA's accounts) so it is possible that some of the information in it is relevant to the request.

4. Any reports sent to (name deleted) or her attorneys or representatives about the endowment.
 5. Any communications to (name deleted) or her attorneys or representatives on the excess funds in 2014 as suggested by a THA member (at their AGM which is referenced in the minutes for 2014).
 6. Any accounting or other records about the passing of the money from the College to THA.
 7. Any information about the '*projects*' on which the money is meant to be spent.
 8. Any information about the dividends, value of the endowment(s), the smoothing of the fund, the number of years the dividend is smoothed over, the income received from the endowment(s):
 9. Any reports submitted to the Charity Commission in relation to the contract.
20. Trinity Hall responded on 29 January 2016 and stated it had made searches and enquiries for any further information held falling within the scope of the complainant's request. In relation to the specific items 1, 2, 4, 5 and 7 it stated that it had found nothing further which was relevant to the request. In relation to item 3, it stated that it did not share a current account with THA. In relation to item 6, it stated that income from THA's investment in its endowment was transferred by direct debit and no other records were held. In relation to item 8, it stated that information about the endowment was publicly available on its website and provided the necessary links.⁴ In relation to item 9, it stated that no reports had been submitted to the Charity Commission in relation to contract. However, it added that all submissions made by Trinity Hall to the Charity Commission were publically available via the Charity Commission's website.⁵ Trinity Hall concluded by stated that it was only

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<http://www.trinhall.cam.ac.uk/about/policy-statements/detail.asp?ItemID=283>
and <http://www.trinhall.cam.ac.uk/alumni/publications/trinity-hall-review/default.asp?ItemID=2879>

5

<http://apps.charitycommission.gov.uk/Showcharity/RegisterOfCharities/CharityWithPartB.aspx?RegisteredCharityNumber=1137458&SubsidiaryNumber=0>

able to confirm details of information that it held and could not comment on whether any information may or may not be held by THA which was a separate independent organisation.

Reasons for decision

21. Trinity Hall has stated that it does not hold any recorded information in respect of questions 1 and 2 of the complainant's request. In relation to question 3, it has acknowledged that there were thirteen documents falling within the scope of this question but only eight were still held in a recorded format at the time of the request. All of these eight documents have been withheld in their entirety under sections 40(2) and 43(2) of the FOIA.
22. The scope of the Commissioner's investigation will be to assess whether Trinity Hall has identified all of the recorded information falling within the scope of the complainant's request comprising of three questions and then determine whether it has correctly applied section 40(2) and if necessary, section 43(2) of the FOIA to the recorded information held.

Section 1 of the FOIA – recorded information held at the date of the request

23. Section 1(1)(a) of the FOIA requires that a public authority in receipt of a request for recorded information must confirm or deny whether it holds the information specified in the request. Clearly, part of the requirement of this subsection is that the public authority must establish accurately whether it holds the requested information.
24. In this case, the complaint has disputed the accuracy of Trinity Hall's response that the only information it holds are the eight documents falling within the scope of question 3 of her request.
25. The role of the Commissioner in this case is to initially make a decision as to whether Trinity Hall was correct to state that the only information it held at the date of the request was the eight documents referred to above. In making this decision, the Commissioner has applied the civil standard of the balance of probabilities, which is in line with the approach taken in a number of cases by the First-tier Tribunal (Information Rights), including *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072.
26. In making a decision based on the balance of probabilities, the Commissioner has taken into account the complainant's comments and the searches and enquiries carried out by Trinity Hall.

27. With regard to question 1 of her request, the complainant has pointed out that when she spoke to the benefactor's wife she was informed that a contract did exist and it had everything in it, including restrictions on the way the money was to be spent. Trinity Hall has responded by stating that its current practice for donations is that they are covered by formal gift agreements between the donor and the College. However, it has added that this was not routinely the case in 2003 when donations were made. Trinity Hall has stated in the present case that the donations were made specifically to support its work and that of the College's Alumni and Development Office. No formal gift agreement was drawn up and no annual accounting and reporting requirements were stipulated.
28. With regard to question 2 of her request, the complainant's has stated that when she spoke to the benefactor's wife she was advised that Trinity Hall report to her every year about the use and income derived from the benefaction. The complainant also suggested that Trinity Hall might be required to notify and report to Charity Commission in which case it should hold more information regarding the benefaction that it had so far been disclosed to the Commissioner. However, she has not been able to produce any evidence that this is the case.
29. Question 3 of the complainant's request is drafted in general terms and seeks 'anything else' that sheds light on the contract and any reporting requirements under it or any information on the way Trinity Hall handled the benefaction. Trinity Hall has disclosed the only information it holds falling within the scope of this question which comprises of the eight documents it has disclosed to the Commissioner. The Commissioner has suggested that Trinity Hall might hold further information as it already publishes details of benefactors and legators on its website. Trinity Hall has pointed out that the Roll of Benefactors on its website lists names of all donors who have consented to their names being published while recognising those that have expressed a desire to remain anonymous. It has also pointed out that there is a summary of donations made by the benefactor in this particular case (under the name of their private foundation) including the one which is the subject of the complainant's request.
30. With regard to the searches and enquiries carried out, Trinity Hall has informed the Commissioner that its Compliance Officer (who is also the Bursar's PA) personally searched the electronic and paper files in the Bursary. Unfortunately, these searches yielded no recorded information falling within the scope of the complainant's request. Trinity Hall's Compliance Officer has also informed the Commissioner that she met with the College's Development Director who informed her that having carried out a search of the Alumni and Development Office the only recorded information identified and located falling within the scope of

the complainant's request comprised of the electronically held eight documents sent to the Commissioner. Trinity Hall's Development Director has pointed out that it is the practice of its Alumni and Development Office to scan and upload onto its database any correspondence or documentation relating to a donation that is deemed to be necessary to be retained. Original paperwork is retained for a year before being destroyed. The Development Director has confirmed that in this case the original copies of the documents held on its database have been destroyed in line with usual its practice and no other emails or electronic documents have been retained.

31. The Commissioner has noted the comments made by the Chamber President in the First Tier Tribunal Hearing of the case EA/2014/0086 when he stated at paragraph 31 in relation to the 'contract' between the benefactor and Trinity College that there was 'no reliable evidence that any such contract exists'.⁶
32. Having taken into account the complainant's comments and the explanation given by Trinity Hall regarding the searches and enquiries it has carried out as summarised above, the Commissioner is satisfied, on a balance of probabilities, that no further information is held falling within the scope of the complainant's request with the exception of that which has already been disclosed to the Commissioner in respect of question 3.

The exemptions

33. Trinity Hall has applied the exemptions under sections 40(2) and 43(3) of the FOIA in relation to the recorded information it holds in respect of question 3 of the complainant's request. The Commissioner will now deal with each exemption in turn.

Section 40(2) of the FOIA – Personal data

34. Trinity Hall has argued that all of the information it holds falling within the scope of question 3 of the complainant's request is the 'personal data' of the surviving donor (the benefactor's wife) the disclosure of which would breach the data protection principals.

⁶ This is a reference to the hearing of the First-Tier Tribunal appeal of Bryce, the Information Commissioner and Trinity Hall EA/2014/0086 on 30 April 2015.
[http://www.informationtribunal.gov.uk/DBFiles/Decision/i1393/Bryce,%20Debbie%20EA.2014.0086%20\(08.10.14\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1393/Bryce,%20Debbie%20EA.2014.0086%20(08.10.14).pdf)

35. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption involves two stages; first, whether the information in question constitutes personal data and, secondly, whether disclosure of that personal data would be in breach of any of the data protection principles.

Does the requested information contain the personal data of the surviving donor (the benefactor's wife)?

36. As to whether the requested information constitutes the personal data of the surviving donor, the Commissioner has considered the definition of this given in section 1(1) of the Data Protection Act 1998 (DPA) which states:

"'personal data' means data which relate to a living individual who can be identified-

(a) from those data, or

(b) from those data or other information which is in the possession of, or is likely to come into the possession of, the data controller".

37. The Commissioner has seen the requested information and is satisfied that it contains the personal data of the surviving donor. In six of the eight documents the surviving donor is specifically identified by name. In the remaining two documents, the content is sufficiently detailed and contemporaneous to relate to her and the donation made jointly with her late husband.

38. As the Commissioner is satisfied that the requested information contains personal data as defined by section 1(1)(a) of the DPA, the next step for him to consider is whether disclosure of that personal data would be in breach of any of the data protection principles.

Would disclosure of the information be fair?

39. In this case the Commissioner has focussed here on the first data protection principle, which requires personal data to be processed fairly and lawfully. In particular, he has focused on whether the disclosure would be, in general terms, fair to the data subject.

Fairness

40. In forming a conclusion as to the fairness of disclosing the personal data, the Commissioner has taken into account the reasonable

expectations of the data subject, what consequences disclosure may have on her and whether there is any legitimate public interest in the disclosure of this information.

The reasonable expectations of the data subject

41. Trinity Hall has contacted the surviving donor and she has confirmed that she does not consent to the requested information being disclosed in full or with redactions as it relates to a private donation.
42. Trinity Hall therefore believes that the surviving donor would have a reasonable expectation of the requested information being kept private.
43. The Commissioner has seen the requested information and is satisfied that relates to the details of a private donation made by the surviving donor and her later husband. The Commissioner has noted the surviving donor's express wishes regarding disclosure and accepts she would have a reasonable expectation of privacy in relation to the requested information.

Consequences disclosure

44. On the issue of the consequences of disclosure, the Commissioner takes the view that it would cause the surviving donor distress if Trinity Hall disclosed the requested information against her express wishes.

Legitimate public interest in the disclosure against any prejudice to the rights and freedoms or legitimate interests of the data subject

45. Whilst section 40(2) is not a qualified exemption according to section 2 of the FOIA, it is necessary for there to be a public interest element for disclosure to comply with the first data protection principle. The issue here is whether any legitimate public interest that does exist for disclosure outweighs the prejudice to the rights and freedoms or legitimate interests of the data subject. See Schedule 2, paragraph 6 of the DPA.
46. As a public authority and registered charity, Trinity Hall accepts there is a public interest in it being open and transparent in relation to the way it accounts for the income and donations it receives and believes this interest is satisfied by the general information which it publishes on its website. Links to this information have already been provided to the complainant.⁷

⁷i) <http://www.trinhall.cam.ac.uk/supporters/fundraising/endowment/>;

47. Trinity Hall does not believe that it is in the public interest to disclose the amount and terms of any private donation as this information is commercially sensitive and disclosure could potentially damage its future fundraising activities.
48. The Commissioner notes that the existence of the donation made in 2003/2004 which is the subject of the complainant's request is referenced in the decision of the First-Tier Tribunal in the appeal of Bryce, the Information Commissioner and Trinity Hall EA/2014/0086 on 30 April 2015.
49. In addition to knowing about the existence of the donation, the complainant believes there is a public interest in knowing about its terms and how it is managed by Trinity Hall. This is because she believes the money may have been misspent.
50. The Commissioner recognises there is a public interest in openness and transparency regarding the accounting for income and donations received by Trinity Hall. The Commissioner accepts this interest is satisfied by the information Trinity Hall publishes on its website.
51. The Commissioner also accepts that there is a public interest in Trinity Hall being able to continue with its ability to attract donors and engage in fund raising activities which disclosure of the type of information being requested might prejudice.
52. Although the complainant has argued there is a public interest knowing the terms of a specific private donation as she believes the money may have been misspent, she has not produced any evidence to support this belief. The Commissioner does not therefore accept there is a public interest in the disclosure of this level of information.
53. On balance the Commissioner concludes that any legitimate interest in the disclosure of the requested information does not outweigh the

ii) <http://www.trinhall.cam.ac.uk/about/policy-statements/detail.asp?itemID=283>

iii) <http://www.trinhall.cam.ac.uk/alumni/publications/milestones/>

prejudice to the rights and freedoms or legitimate interests of the data subject.

54. As the Commissioner is satisfied that section 40(2) of the FOIA is engaged in respect of the entirety of the requested information held by Trinity Hall he has not gone on to consider section 43(2).

Right of appeal

55. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

56. 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.
57. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF