

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 March 2016

Organisation: Francis Crick Institute

Address: Gibbs Building
215 Euston Road
London
NW1 2BE

Decision (including any steps ordered)

1. The complainant has requested from the Francis Crick Institute (the 'Crick') information relating to a Physiologist's emails between a Physicist, staff at the Science Media Centre and writers/reporters from 8 June 2015 to the present.
2. The Crick has explained that it is not a public authority for the purposes of the FOIA and has refused to respond to this request.
3. The Commissioner's decision is that the Crick is not a public authority for the purposes of the FOIA. He therefore upholds the Crick's position and requires no steps to be taken in this case.

Request and response

4. On 22 January 2016 the complainant wrote to the Crick and requested information in the following terms:

"a) Any emails between [named individual] and [named individual] from June 8th 2015 to the present.

b) Any emails between [named individual] and [named individual], or emails sent by and received [named individual] that include the keyword 'Mensch' from June 8th 2015 to the present.

c) Emails between [named individual] to [named individual] of the Science Media Centre and/or staff at the Science Media Centre, or

emails sent by and received by [named individual] that feature keywords [named individual] or 'Science Media Centre' from June 8th 2015 to the present.

d) Any emails sent by or received by [named individual] featuring the keywords [named individual] (or [named individual] 'St Louis' or 'CSL') from June 8th 2015 to the present.

e) Emails between [named individual] and [named individual], or emails sent by or received by [named individual] that feature the keyword 'Whipple' from June 8th 2015 to the present."

5. On the same day the Crick responded and explained to the complainant that the Crick is an independent charity and that it is not a public organisation. Therefore, it is not subject to FOI requests.
6. The complainant rejected this response that being a charity exempts the Crick from FOI requests.
7. On 27 January 2016 following advice from its general counsel, the Crick responded and provided the following response:

"The Crick is not a public authority for the purposes of the Freedom of Information Act and is not subject to its requirements. The Crick offers PhD and other student programmes in conjunction with universities and is not itself an educational institution as defined in the Act."
8. On the same day the complainant expressed his dissatisfaction to the Crick's response.
9. On 28 January 2016 the Crick explained in further detail to the complainant why it is not subject to the FOIA.
10. On the same day the complainant again expressed his dissatisfaction to the Crick's response.

Scope of the case

11. The complainant contacted the Commissioner on 4 February 2016 to complain about the way his request for information had been handled. Specifically, the Crick's decision to refuse to comply with his request as it considers that it is not subject to the FOIA.
12. The Commissioner considers the scope of this case to be concerned with the question of whether the Crick is a public authority for the purposes of the FOIA.

13. In the recent case of *Fish Legal v Information Commissioner & Others* (GIA/0979/2011 & GIA/0980/2011) ("Fish Legal"), the Upper Tribunal Administrative Appeals Chamber (the "UT") ruled that the Commissioner has jurisdiction to both investigate and decide whether a body is a public authority.
14. The Commissioner therefore has jurisdiction to decide this question. The First Tier Tribunal (the "FTT") may also hear appeals against the Commissioner's decisions and the UT may hear appeals against the decisions of the FTT.

Reasons for decision

15. The FOIA gives members of the public the right to access recorded information held by public authorities and places a duty on public authorities to respond to requests for such information.
16. If a public authority receives a request for information they are usually legally obliged to provide it within 20 working days, unless any of the exemptions contained within the FOIA apply. If a public authority believes an exemption does apply to the information that has been requested then the public authority must explain why the exemption applies.
17. The definition of 'public authority' is given in section 3(1) of the FOIA. In particular it states that under the FOIA a "public authority" means-
 - (a) subject to section 4(4), any body which, any other person who, or the holder of any office which-
 - (i) is listed in Schedule 1, or
 - (ii) is designated by order under section 5, or
 - (b) a publicly-owned company as defined by section 6.
18. Section 5 allows the Secretary of State to designate a public authority by order.
19. Section 6 states that a company is a "publicly-owned company" for the purposes of section 3(1)(b) if it is wholly owned by the Crown or is wholly owned by any public body listed in Schedule 1 (other than a government department or any authority which is listed only in relation to particular information).

The Crick's position

20. The Crick explained that it is an independent charity and is not a public organisation. Therefore is not subject to FOI requests. It reported that it is a company limited by shares and is a registered charity. Although a charity may be subject to its provisions if it falls within the definition of a public authority as contained in Schedule 1, it argued that this is not the case for the Crick.
21. The Crick said that it does not fall within the scope of Part I (general), Part II (local government), Part III (national health) and Part V (police) or Part VI (other public bodies and offices.) The Crick explained that it may appear that it falls within the scope of Part IV (maintained schools and other educational institutions) as it runs a variety of student programmes, including a PhD programme. However, the Crick stated that it is not brought within Part IV by virtue of these activities.
22. The Crick added that there are certain sections of the FOIA which sets out in detail the forms of governing body which *are "educational institutions"*. However, it said that it is not constituted to be one of these and that this is one of the reasons why the Crick undertakes its student programmes in conjunction with universities, because it does not qualify to be a higher education institute in its own right.
23. The Crick explained that the answer lies in the detailed wording of the legislation which requires cross-referring to the Further and Higher Education Act 1992 ("FHEA"). It said that this should be read bearing in mind that the Crick is constituted as a private company and a registered charity.
24. The Crick clarified its charitable objects which are: *"the advancement of human health and education for the benefit of the public by the promotion and carrying out, directly or indirectly, of all aspects of biomedical research and innovation..."* It referred the complainant to Schedule 1, Part IV, section 53(1) and section 53(2) of the FOIA and said that it does not carry out the listed further education activities and is not established as a further education corporation, which would be necessary were it to be permitted to do so.
25. The Crick argued that it is not a designated institution and does not fall within the criteria to be a designated institution. It said that it does not receive any further or higher education grant funding.
26. The Crick stated that it is not a university and does not receive higher education council funding. It explained that the Crick is a private company established under the Companies Acts and is not constituted as a higher education corporation under the relevant legislation.

27. The Crick reiterated that it is not an institution of a university and its position remains that it is not subject to the FOIA. Therefore, the Crick did not comply with the request under the FOIA.

The complainant's position

28. The complainant argued that being a charity does not automatically offer exemption for FOI requests. He said that in particular, charities which offer further education are liable under the FOIA. The complainant is of the view that as the Crick provides further education to PHD students, masters' students and others, including sandwich student, it is therefore an institution within the further education sector. He considers that these are subject to FOI under the FOIA Schedule I Part IV whether charities or not.
29. The complainant further argued that the Crick is a "*unique*" partnership between various academic institutions and he is of the view that the senior academics attached to it are still employed by the universities concerned. The complainant said that what he considers as the guarding of all the staff that would be subject to FOIA request at their institutions of employment, (at the email address in question) opposes the FOIA legislation.
30. He added that the decision not to comply with FOI requests because the Crick maintained that it is a charity and is not covered by legislation is what he believes is the Crick guarding from "*legitimate*" inquiries and questions.
31. The complainant believes that only staff members that are full time administrative staff of the institute should be covered by any exemptions. He argued that otherwise senior academics are able to evade the FOIA rules and make their work unattainable from the law which he considers is not in the public interest of openness and transparency.
32. The complainant maintained his argument that the Crick is an institution within the further education sector as it provides courses of further and higher education. He argued that the Crick meets the requirements of what an institution must be and he therefore considers it to be a designated institution and subject to the FOIA. The complainant noted that the Crick has an ac.uk address and that in order to apply for and obtain an ac.uk domain he argued that the Crick must have presented itself as an educational institution.

The Commissioner's position

33. The Commissioner is satisfied that the Crick is not a public authority under the FOIA. He accepts that the Crick is a private company and an

independent research organisation which operates as a registered charity.

34. The Commissioner acknowledges that the Crick is funded by the Medical Research Council ('MRC') but it is not owned or managed by the MRC.
35. The Commissioner has considered the complainant's points and the relevant sections of the FOIA as stated above. In view of this, the Commissioner has concluded that the Crick is not a public authority as defined by section 3(1) of the FOIA and therefore it does not have a duty to respond to information requests.

Right of appeal

36. 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

37. 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.
38. 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
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SK9 5AF