

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 May 2021

Public Authority: Cambridge University Press
Address: University Printing House
Shaftesbury Road
Cambridge
CB2 8BS

Complainant:
Address:

Decision (including any steps ordered)

1. The complainant has requested the first and final drafts of specific chapters of a book (the book) submitted to Cambridge University Press (CUP) by the author. The specific chapters with which the complainant is concerned are 9, 10, 13, 16, 17, 18 and 19.
2. CUP withheld the information under section 41 (information provided in confidence) of the FOIA.
3. The Commissioner's decision is that CUP is entitled to rely on section 41 of the FOIA.
4. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

5. On 9 February 2020 the complainant wrote to CUP and requested information in the following terms:

"I am making the following request, corresponding to parts (3)(c) and (3)(d) of my previous 30 August 2018 request:

(2)(a) Chapters 16 to 19 of the initial draft manuscript that was received by CUP on 20/10/2016.

(b) Chapters 16 to 19 of the final draft manuscript that was received by CUP on 28/12/2016.

(c) Chapters 9, 10 and 13 of the initial draft manuscript that was received by CUP on 20/10/2016.

(d) Chapters 9, 10 and 13 of the final draft manuscript that was received by CUP on 28/12/2016."

6. CUP responded on 6 March 2020. It confirmed that it held the information but was withholding it, citing section 41 (information provided in confidence) and section 43(2) (commercial interests) of the FOIA.
7. Following an internal review CUP wrote to the complainant on 1 June 2020. It maintained its original position.

Scope of the case

8. The complainant is concerned that the book contains plagiarised material. The complainant contacted the Commissioner on 1 September 2020 to complain about the way their request for information had been handled.
9. The Commissioner therefore considers the scope of her investigation to be to determine whether CUP has correctly withheld the information, citing section 41 (information provided in confidence) of the FOIA. If she determines that section 41 of the FOIA has not been correctly applied, she will go on to consider CUP's application of section 43 to the withheld information

Reasons for decision

10. Section 41(1) of the FOIA states that information is exempt from disclosure under the FOIA if:
 - a) it was obtained by the public authority from any other person (including another public authority), and

b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

Was the information obtained from another person?

11. CUP has explained that the first and final draft chapters were provided to it by the author of the book.
12. The Commissioner is therefore satisfied that the first and final draft chapters have been provided to CUP by the author of the book, as part of the publication process.

Would disclosure constitute an actionable breach of confidence?

13. For section 41(1)(b) to be met disclosure of the withheld information must constitute an actionable breach of confidence. In line with the decision reached in *Coco v A N Clark (Engineers) Limited [1968] FSR 415*, a breach will be actionable if it meets three criteria:
 - a) The information has the necessary quality of confidence.
 - b) The information was communicated in circumstances importing an obligation of confidence.
 - c) Unauthorised disclosure would cause a specific detriment to either the party which provided it or any other party.

The decision reached in *Coco v Clark* is referenced within the ICO's guidance, '*Information provided in confidence (section 41)*'.¹

Does the information have the necessary quality of confidence?

14. Information will have the necessary quality of confidence if it is more than trivial, and is not otherwise accessible.
15. CUP has explained that the first and final draft chapters do not represent trivial information; it is the culmination of considerable effort of the author which is evidenced in the number of drafts

¹ [information-provided-in-confidence-section-41.pdf \(ico.org.uk\)](https://ico.org.uk/information-provided-in-confidence-section-41.pdf)

submitted. CUP have also explained that the book, the subject of which is highly specialised, is the culmination of the author's entire academic career to date.

16. CUP has explained that before a book is published it will be submitted to a publishing house in several iterations. The information that is otherwise accessible, the book in its final published state, cannot be separated from the information that is the subject of this request without breaching the necessary quality of confidence.
17. The Commissioner is therefore satisfied that the first and final draft chapters are more than trivial and the information is not otherwise accessible.

Was the information communicated in circumstances importing an obligation of confidence?

18. CUP has explained that an author submits drafts to a publisher so it can consider the suitability of the work and provide feedback to the author. These exchanges are considered confidential by both the publisher and the author and neither party would expect this information to be shared more widely.
19. The Commissioner is satisfied that the first and final draft chapters represent information that was imported by the author to CUP, as part of a relationship in which the author can reasonably expect confidence to be maintained.

Would unauthorised disclosure cause a specific detriment to either the party which provided it or any other party?

20. CUP has provided the Commissioner with arguments relating to the potential detriment to the author should the requested information be disclosed. The Commissioner has not included the detail surrounding this detriment within this decision notice as it refers directly to the individual. The Commissioner is satisfied based on CUP's arguments that there is a real risk of detriment should disclosure occur.
21. Due to CUP's association with Cambridge University, it is subject to the requirements of the FOIA where other publishers are not. CUP has explained that it would suffer considerable reputational damage should the requested information be disclosed through application of the FOIA in this manner. Furthermore, CUP are of the opinion that disclosure may dissuade authors from approaching CUP to publish their work, thus effecting CUP's ability to provide high quality academic learning materials.

22. The Commissioner therefore is satisfied that disclosure of the first and final draft chapters would be likely to cause detriment to CUP. Furthermore, disclosure is likely to damage the professional relationship between both parties and CUP's relationships with current and future authors that it represents.
23. The Commissioner considers CUP has sufficiently demonstrated the detriment that it as the 'other party', and the author, would suffer to meet this part of the test.
24. The complainant is concerned that the first and final chapters are a verbatim reproduction of information already in the public domain and therefore cannot be provided importing an obligation of confidence.
25. However, the Commissioner is satisfied that the criteria referred to within paragraph 13 have been met and the information which is the subject of this request has been provided to the authority in confidence.

The common law duty of confidence and the public interest

26. While section 41(1) of the FOIA is an absolute exemption, and therefore not subject to the public interest test, the common law duty of confidence contains an inherent public interest test. This test assumes that information should be withheld unless the public interest in disclosure outweighs the public interest in maintaining the duty of confidence (and is the reverse of that which is usually applied under the FOIA).
27. The complainant has put forward substantial arguments as to why it is in the public interest for the first and final draft chapters to be disclosed. The complainant believes that disclosure would compel CUP to hold itself accountable in relation to allegations of academic misconduct and plagiarism.
28. CUP has explained that it has considered the public interest in disclosing this information, to determine whether the public interest in disclosure outweighs the public interest in maintaining the duty of confidence. CUP has explained that the circumstances surrounding this request for information affect the individual and not the wider public. Furthermore, CUP has explained that it is unlikely that the requested information, draft chapters of a piece of highly specialised and niche academic work, would be of interest to the wider public. Furthermore, CUP has explained that the disclosure of the information in question is unlikely to provoke or inform a legitimate public debate.

29. The complainant is also concerned that, in response to a subsequent request for information, CUP has disclosed an iteration of chapters 9, 10 and 13 alongside the results of a plagiarism detection system, iThenticate. The complainant notes that the information contained within these chapters differs from the book's final published state. The complainant is of the opinion therefore that this information must represent either the first or final draft chapters which are the subject of this request for information. The complainant is concerned that this disclosure undermines CUP's engagement of section 41 of the FOIA in this instance.
30. The Commissioner notes that, in response to this latter request for information, CUP has confirmed that the complete book was analysed using iThenticate in November 2017. However, there is no evidence to suggest that the material subsequently disclosed represents either the first or final draft chapters which are the subject of this request for information.
31. The Commissioner reaches her decision by considering the submissions provided to her by the public authority. These submissions explain how the public authority considered a request for information at the time that it was received, taking into account the circumstances surrounding the request at the time it was made.
32. The Commissioner notes that this subsequent request for information was made on 16 November 2020 and circumstances may have changed in the time elapsed between these two requests.
33. Furthermore, CUP must consider each request for information it receives regarding the book on a case by case basis, including informing the complainant of their right to bring a concern to the Commissioner under section 50 (Application for decision by Commissioner) of the FOIA.

The Commissioner's decision

35. As the public interest test inherent in the common law duty of confidence is a test as to whether the public interest in disclosure would be so strong as to be a defence against any action which may be taken for breach of confidence, the Commissioner has to fully

consider whether any public interest which may be satisfied by disclosure is strong and compelling enough to constitute a defence against any such action.

36. Whilst the Commissioner acknowledges that the circumstances surrounding this request for information are of extreme importance to the complainant, she must decide whether the public interest in disclosure of the information outweighs that in maintaining the duty of confidence.
37. The Commissioner recognises the public interest surrounding the transparency of processes, however she is of the view that there is no wider public interest in the information which is the subject of this request. Whilst the Commissioner recognises there is some wider public interest in how public authorities in an academic setting handle accusations of plagiarism, she does not consider that disclosure of the information requested would help to inform this debate or increase the wider public debate surrounding the complainant's concerns.
38. Furthermore, CUP has explained that comments on drafts must be able to be exchanged freely between authors and publishers, so that academic texts reflect the most considered, accurate and balanced positions when published. The Commissioner does not consider that any public interest in disclosure would be strong enough to outweigh that in maintaining confidentiality in order to achieve the publication of such academic texts.
39. Having fully considered the circumstances of this case and the withheld information, the Commissioner's decision is that CUP has correctly withheld the information under section 41(1) of the FOIA.
40. As the Commissioner has found that section 41 is engaged, she does not consider it necessary to consider CUP's application of section 43 of the FOIA to the withheld information.

Right of appeal

41. 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@justice.gov.uk

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

42. 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.
43. 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

**Pam Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF**