

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 8 September 2022

**Public Authority:** The Governing Body of Lincoln College

**Address:** Monks Road  
Lincoln LN2 5HQ

#### **Decision (including any steps ordered)**

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1. The complainant requested recorded information held by Lincoln College relating to its Saudi education business sent to or received from Interserve or any of its subsidiaries in the UK or Saudi Arabia. Lincoln College advised that the information was not held for the purposes of FOIA.
2. The Commissioner's decision is that Lincoln College does not hold the information within the scope of the request.
3. The Commissioner does not require Lincoln College to take any steps.

#### **Request and response**

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4. On 25 January 2022, the complainant made a request:

"Please release recorded information such as emails (including attachments) held by Lincoln College in the UK from January 2012 until the present day in relation to its Saudi education business; emails sent to/received from Interserve or any of Interserve's subsidiaries in the UK or Saudi Arabia.

Searching email records using the following keywords should bring up all the emails sent/received (then scanned to filter out those relating to Saudi). 1) "@interserve.com" 2) "@esgsa.com" 3) "@interservehealthcare.com" 4) "@interservefm.com"

5. On 28 January 2022, Lincoln College issued a response stating:

"In respect of your request of 25 January 2022 to release recorded information between Lincoln College and Interserve, the refusal is on the

grounds that this is a repeat request and that we have previously confirmed, in response to your Request B dated 23 July 2021, that any records related to any potential communication with Interserve would purely be between Interserve and the Saudi based company and not Lincoln College UK."

6. On 4 February 2022, Lincoln College issued an internal review response stating:

"As previously responded may I remind you that any records related to any potential communication with Interserve would purely be between Interserve and the Saudi based company and not Lincoln College UK and so the same principle applies that it is not releasable under UK FOIA as it is held solely on behalf of the KSA company.

Please also be advised that our IT system does not have the document management system required to carry out a search in the way that you suggest and also that as staff leave their IT and email accounts are deleted from the system."

### **Scope of the case**

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7. The complainant contacted the Commissioner on 5 February 2022, dissatisfied with Lincoln College's response to their request.
8. The complainant considers that Lincoln College must hold emails in the UK that it has sent to, or received from, Interserve or any of its subsidiaries regarding its Saudi education business.
9. Therefore, the scope of the case is for the Commissioner to determine whether Lincoln College holds information for the purpose of FOIA.

### **Reasons for decision**

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#### **Section 3(2)(a) of the FOIA – Information held by the public authority**

10. Section 3(2) of FOIA sets out the legal principles that establish whether information is held for the purpose of the FOIA.
11. Section 3(2) of FOIA states:

"3.(2) For the purposes of this Act, information is held by a public authority if-

(a) it is held by the public authority, otherwise of behalf of another person, or

(b) it is held by another person on behalf of the authority.”

12. In this case, the complainant is of the view that Lincoln College must hold, in its own right, emails that it has sent to, or received from, Interserve in respect of its Saudi education business.
13. The Commissioner’s guidance<sup>1</sup> on section 3(2) states that when information is held by a public authority solely on behalf of another person, it is not held for FOIA purposes. However, information will be held by the public authority if the information is held to any extent for its own purposes.
14. The Upper Tribunal considered the meaning of section 3(2)(a) in the case of *University of Newcastle upon Tyne v the Information Commissioner and the British Union for the Abolition of Vivisection* [2011] UKUT 185 (AAC, 11 May 2011). It explained that the concept of ‘holding’ information for FOIA purposes “is not purely a physical concept, and has to be understood with the purpose of the Act in mind.” This means that information may be present on a public authority’s premises (or even its IT network) but not held by the authority for FOIA purposes. To be considered ‘held’ for FOIA purposes, there has to be “an appropriate connection between the information and the authority”
15. Each case needs to be viewed individually to determine whether a public authority holds information for its own purposes or solely on behalf of another person. There are several factors that will assist.
16. The weight attached to each one will vary from case to case. In some circumstances, one factor may outweigh all the others.
17. Factors that would indicate that the information is held solely on behalf of another person include:
  - the authority has no access to, use for, or interest in the information;
  - access to the information is controlled by the other person;
  - the authority does not provide any direct assistance at its own discretion in creating, recording, filing, or removing the information; or

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<sup>1</sup> [Document history and version control \(ico.org.uk\)](https://ico.org.uk/document-history-and-version-control)

- the authority is merely providing storage facilities, whether physical or electronic
18. Lincoln College explained to the requester and the Commissioner that Lincoln College International ("LCI") is a Saudi registered company operating three colleges in the Kingdom of Saudi Arabia ("KSA"). In the group corporate structure, LCI sits underneath two subsidiaries of Lincoln College, which is a further education college based in Lincoln in the UK. The head office of LCI is in the KSA and it is run by a general manager and staff in the KSA.
  19. Lincoln College explained that any communication with Interserve relating to the Saudi business would be between Interserve and LCI and not Lincoln College.
  20. Lincoln College explained to the Commissioner that the requester had made previous, similar requests and that, as a result, it had taken legal advice to ensure that it responded correctly to FOIA requests of this nature. Lincoln College stated that it had been advised that it did not hold the information requested for the purposes of FOIA as the information is not needed for any functions conducted by Lincoln College and should LCI not exist, none of the information would exist.
  21. It is the Commissioner's view that, as Lincoln College does not control access to the information requested or provide any direct assistance at its own discretion in creating, recording, filing, or removing the information, any information held by Lincoln College in the UK relating to the Saudi education business is not information that is held by Lincoln College for the purposes of the FOIA.

## Right of appeal

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22. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**