

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

### **Decision notice**

**Date:** 12 January 2023

**Public Authority:** The Governing Body of the University of  
Cambridge

**Address:** The Old Schools  
Trinity Lane  
Cambridge  
CB2 1TN

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

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1. The complainant has requested correspondence regarding the £7.5 million donation from Blavatnik Foundation to the Bodleian and the Friends of the National Libraries.
2. The Commissioner's decision is that the Council of the University of Cambridge (the University) does not hold the information for the purposes of FOIA.
3. The Commissioner does not require the public authority to take any further steps.

#### **Request and response**

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4. On 28 February 2022 , the complainant wrote to the University and requested information in the following terms:

"Can you send me any records or information (including emails, reports, text messages etc) that Cambridge University has over the recent £7.5 million donation from the Blavatnik Foundation to the Bodleian and the Friends of the National Libraries. I believe the University Librarian is a trustee of the Friends of the National Libraries. I am particularly interested in any discussions around due diligence and ethics."

5. The University responded on 22 March 2022. It stated that it did not hold information within the scope of the request to any extend for its own purposes.
6. Following an internal review the University wrote to the complainant on 14 April 2022. It stated that it did hold some information within the scope of the request, but not for the purposes of university business and therefore it was upholding its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 14 April 2022 to complain about the way his request for information had been handled.
8. The Commissioner considers whether the University holds information for the purpose of FOIA.

### **Reasons for decision**

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9. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

10. 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.”

### **Is the Friends of the National Libraries a separate legal entity for the purposes of FOIA?**

11. The Friends of the National Libraries is a registered charity<sup>1</sup>. It does not perform functions on behalf of the University and nor does the University direct what the Friends of National Libraries priorities or activities should be.
12. Whilst two of the Friends of National Libraries trustees also appear to work at the University, there is no requirement for the University staff to be trustees. Those staff who wish to be trustees do so of their volition and in their own time.
13. The Commissioner accepts the Friends of National Libraries is a separate legal entity from the University. As it is a registered charity and not listed in Schedule 1 of the FOIA, the Friends of National Libraries is not a public authority for the purposes of the FOIA.

**Is the information held by the University on behalf of the Friends of National Libraries?**

14. Whilst a public authority may have physical possession of certain information, it may not "hold" that information for the purposes of the FOIA. Information will not be "held" by a public authority if it only keeps that information on behalf of another person or legal entity.
15. The Upper Tribunal in *University of Newcastle upon Tyne v Information Commissioner and British Union for the Abolition of Vivisection* [2011] UKUT 185 (AAC), approved an earlier ruling by the First Tier Tribunal that:

"s.1 [of the FOIA] would not apply merely because information is contained in a document that happens to be physically on the authority's premises: there must be an appropriate connection between the information and the authority, so that it can be properly said that the information is held by the authority."
16. The question of whether information is "held" by a public authority for its own purposes will be determined by the facts in each case, but the Commissioner's guidance sets out a number of factors to be considered including whether:
  - the authority provides clerical and administrative support for the other person, whether legally required to or not;

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<sup>1</sup> [Charity overview, FRIENDS OF THE NATIONAL LIBRARIES - 313020, Register of Charities - The Charity Commission](#)

- the authority controls access to the information;
  - the authority itself decides what information is retained, altered or deleted;
  - the authority deals with enquiries about the information; or
  - costs arising from holding the information are included in the authority's overall budget.
17. The University confirmed that for the first four factors, it did not have any involvement in the described activities. In relation to the last factor, that the University does pay a membership subscription, but it is not a cost arising from holding the FNL information.

### **The Commissioner's view**

18. The Commissioner is satisfied from the information provided by the University that the it is a separate entity from the FNL and therefore the information which the University holds is held on behalf of the FNL.
19. The decision to undertake charity work, how to raise monies and how to distribute those monies are decisions made by the trustees and not by the University.
20. The Commissioner also notes that the University itself is not a corporate trustee of the FNL. Whilst some of the University staff are trustees, they do so of their own volition.
21. The Commissioner is therefore satisfied that whilst the information be physically present on the University's premises or within its IT systems, it does not "hold" the information 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** .....

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