

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 March 2024

**Public Authority:** The Governing Body of the University of York  
**Address:** Heslington  
York YO10 5DD

#### Decision (including any steps ordered)

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1. The Commissioner's decision is that, under section 22A of FOIA, the University of York ('the University') is entitled to withhold the requested information about the 'Safe to Speak Up?' report. This is because the information is associated with an ongoing programme of research and disclosing it prematurely would be likely to prejudice the University's interests.
2. It's not necessary for the University of York to take any corrective steps.

#### Request and response

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3. The complainant made the following information request to the University of York on 31 October 2023:  
  
"Please send to me all of the materials you hold in connection with the report:  
  
'Safe to Speak Up?' By Dr Anna Bull. Linked to here:  
  
<https://screen-network.org.uk/publication/safe-to-speak-up-sexual-harassment-in-theuk-film-tv-industry/>  
  
However, please exclude the following:

- Anything which may lead to the identities of the interviewees being exposed.
  - The raw material of the interviewees' accounts to which the report makes reference"
4. The University refused the request, citing "22(a) of the Freedom of Information Act, 2000 (FoIA) as this information was obtained in the course of a programme of research, which is continuing with a view to the publication of a report of the research."
  5. In its internal review the University confirmed that it was relying on section 22A of FOIA to withhold the requested information.

### **Reasons for decision**

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6. This reasoning covers the University's application of section 22A of FOIA to the complainant's request.
7. Under section 22A of FOIA, information obtained in the course of, or derived from, a programme of research is exempt information if,
  - (a) the programme is continuing with a view to the publication, by a public authority or any other person, of a report of the research, and
  - (b) disclosure of the information under FOIA before the date of publication would, or would be likely to, prejudice:
    - (i) the programme
    - (ii) the interests of any individual participating in the programme
    - (iii) the interests of the authority which holds the information, or
    - (iv) the interests of the authority mentioned in paragraph (a) (if it's a different authority from that which holds the information).

### **Is the information from a programme of research and is the programme of research ongoing?**

8. Regarding section 22A(a) of FOIA, in his published guidance on this exemption, the Commissioner explains that:

"The exemption will include a wide range of information relating to the research project, and will cover information that is not necessarily going to be published. In other words there does not need to be any intention to publish the information that has been requested.

FOIA does not define 'research'. The Commissioner will use the ordinary definition of the term research: a systemic investigation intended to establish facts, acquire new knowledge and reach new conclusions."

9. In its submission to the Commissioner, the University has confirmed that the information that it's withholding comprises versions of the funding proposal, ethics documentation, data collection documentation, literature review notes, presentations, data analysis, interview transcripts, report drafts and industry and policy briefing drafts.
10. The University has indicated the information is from a programme of research because it has said that the programme of research is ongoing. The academic [carrying out the research] intends to publish further reports relating to the research in late 2024 and possibly beyond. These outputs are likely to include elements of the information requested eg literature reviews and data analysis. But it won't include other data held eg raw data obtained from research participants.
11. When the University received the request in October 2023, the academic confirmed that:

"The main report is finished but I am still in the process of writing up academic outputs from this project, so in that sense it is still ongoing. I anticipate it will take until next summer to complete the academic outputs."

and

"In terms of the summer 2024 date, this is when I expect/hope to have submitted all of the academic publications from this study, although then there will still be a peer review process to go through, so I guess I have to state the date when I expect all materials to be accepted in their final version - this would be more likely to be end of 2024."

12. The Commissioner is satisfied that the requested information is associated with a programme of research into aspects of the UK film and television industry. While one report has been published, the wider research programme remains ongoing with further outputs expected to be published later in 2024.

### **Is there an intention to publish a report of the research?**

13. The Commissioner's guidance states:

"The exemption requires that the research programme must be 'continuing with a view to the publication... of a report of the research (whether or not including a statement of that information)'.

This means that, so long as the research programme continues, the exemption may apply to the information if there is an intention for a report of the outcome to be published at some point in the future. This is the case even if a report has already been published about a particular aspect of the same research programme”.

14. The guidance goes on to explain that this means that, so long as the research programme continues, the exemption may apply to the information if there’s an intention for a report of the outcome to be published at some point in the future. This is the case even if a report has already been published about a particular aspect of the same research programme. So long as one or more reports remain to be published and the research continues, the exemption will still protect information ‘obtained in the course of, or derived from’ the research programme.
15. As has been noted, although one report has been published, the academic carrying out the research intends to publish further outputs relating to the research in the future. The Commissioner therefore considers that this criterion has been met.
16. Confirming that it’s currently relying on section 22A only, the University also says in its submission that once the research programme is concluded, it’s possible it will rely on other exemptions to withhold information relating to the research eg section 40 (personal data), section 41 (information provided in confidence) and section 43 (commercial interests). However, the University says, until such time as the research programme is concluded, it’s not possible to determine exactly what information it would continue to exempt from disclosure.

### **Prejudice to the research or related interests**

17. In their request for an internal review the complainant noted that the report’s author had made public policy recommendations on the back of it and that its launch had already been used to endorse a new standards authority for the creative industries, the Creative Industries Independent Standards Authority (CIISA) – something which the complainant considered would be a major change in the landscape of the arts.
18. Because those things had not been judged to be something likely to prejudice the ongoing programme of research, the complainant considered it was difficult to see how releasing the underlying materials they have requested would cause that prejudice.
19. In its internal review response, the University advised that prematurely releasing information about the study “would prejudice the current interests of the University of York.”

20. In its submission to the Commissioner the University has explained that disclosing the information "could" lead to valuable research ideas being copied or adapted by competitors, or both. Although some information relating to the research objectives, design and methodology has already been published as part of the 'Safe to Speak Up' report, disclosure was carefully controlled to ensure nothing that would undermine the current research workstreams was put in the public domain.
21. The Commissioner will accept that the prejudice the University envisages is relevant to the section 22A exemption and that it 'would be likely to' occur if the information in scope were to be disclosed. This is because disclosing the research information prematurely could lead to the researcher's work being copied or adapted. In its discussion of the public interest, the University has also noted that disclosing the information prematurely could undermine the whole research programme. This is because it could lead to conclusions being made, and discussion arising, based on incomplete data that has been released without all the necessary context. This could undermine the whole research programme.
22. The Commissioner therefore considers that section 22A is engaged in relation to the information the University is withholding. He's gone on to consider the associated public interest test.

### **Public interest test**

23. In their request for an internal review, the complainant stated that the 'Safe to Speak?' report endorses CIISA and that the report is now inextricably linked with CIISA. They said they consider that there are significant concerns about how this body has been formulated and its "intersectionality". The complainant said they were eager to understand how the ethics of the 'Safe to Speak Up?' report fitted into the broader ethics of CIISA's formulation. They argued that there's a public interest in examining the methodology, ethics, and general culture behind this study, given that reasonable questions may be asked about it and that it will be very influential on individuals in the creative industries via the organisation it supports ie CIISA.
24. In their complaint to the Commissioner the complainant presented further evidence which they consider greatly strengthens their public interest case. They said that in their internal review request they had mentioned that the Department for Culture, Media and Sport had disclosed minutes of the roundtable meetings discussing the setting up of what became CIISA.
25. What these minutes seem to have revealed to the complainant is that Creative UK's CEO (who chaired the roundtable meetings) and CIISA's interim CEO may have made false statements in connection with the

roundtable meetings. The complainant provided copies of the statements for the Commissioner to compare; they concern whether certain individuals participated in the roundtable meetings in an individual capacity or as representatives of organisations. The complainant said that they felt that this was so serious it means that all documents relating to the University's 'Safe to Speak Up?' report are in the public interest, because they support CIISA's set up.

26. In its correspondence to the complainant, the University acknowledged that releasing the requested information would serve the public interest by allowing individuals to better understand and scrutinise the business of the University, and in particular its approach to and management of programmes of research.
27. But the University said there's a very strong public interest in allowing researchers to complete their programme of research and to finalise their findings before the programme is subjected to external scrutiny. This allows time and space for research findings to be tested by peer review, and for the final research reports to be prepared for publication.
28. In addition, the University said, there's a risk that an incomplete picture of the research, lacking relevant context and explanation would arise if information were published whilst the research is ongoing. This has the potential to negatively affect the impact and usefulness of the research being undertaken. In due course, when researchers have completed their programme of research and finalised findings the published results will be available for external scrutiny.
29. In its submission to the Commissioner, the University has also noted that academics work in a competitive environment, competing for limited funding and working hard to identify areas for research which are novel. They also compete to be recognised as contributing research that is 'world-class, dynamic and responsive'.
30. As it has outlined previously, prematurely releasing information about the study could lead to valuable research ideas being copied or adapted by competitors, or both.

### **Balance of the public interest**

31. From their communications, it seems to the Commissioner that the complainant's concern is more focussed on CIISA. The published 'Safe to Speak Up?' report makes only minimal reference to that body and the Commissioner doesn't consider that disclosing the requested information would be likely to shed significant light on how CIISA was developed or the associated roundtable meetings. And regarding another of the complainant's arguments, the published report includes information on its methodology and the limits of the study - for that report at least, if not the wider research programme of which the report is a part.

32. The Commissioner is satisfied that, at the time of the request and currently, there's greater public interest in withholding the information in this case. This is so the researcher in this case can finish their programme of research to their planned timetable and away from distraction that could be caused by disclosing the information early, and by disclosing it without context and in an incomplete state. This would potentially undermine the wider research programme.
33. The Commissioner notes that this does not mean that any similar request made after the date of publication of the final research outputs would automatically result in disclosure. Whilst section 22A can't be engaged once the research programme has finished, the Commissioner would consider afresh any further exemption cited on the basis of the specific circumstances at the time of the request. As noted, the University considers that elements of the requested information could engage other exemptions.

## **Right of appeal**

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34. 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)

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Cressida Woodall**  
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