

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 June 2024

Public Authority: Council of Queen Mary University of London
Address: Mile End Road
London
E1 4NS

Decision (including any steps ordered)

1. The complainant has requested emails between a named Professor and Polaris pharmaceutical company within a certain timeframe. Queen Mary University of London (QMUL) refused to provide the information citing section 43(2) of FOIA (commercial interests) and section 22A of FOIA (research information).
2. The Commissioner's decision is that QMUL cited section 22A of FOIA correctly and that the public interest favours maintaining the exemption. He has also decided that QMUL breached sections 1(1)(a) and 10(1) of FOIA by not confirming if it held the requested information within the time for compliance. QMUL also breached section 17(1) of FOIA by later relying on an exemption it had not included in its refusal notice.
3. The Commissioner does not require further steps.

Request and response

4. On 9 October 2023, the complainant wrote to QMUL and requested information in the following terms:

"Pursuant to the Freedom of Information Act 2000, I would like to obtain a copy of the following public records: E-mails and attachments to/from/cc Peter Szlosarek ([email address redacted]) and e-mail addresses ending in "@polarispharma.com" between

January 1, 2022 and October 9, 2023. Please include deleted and archived emails in this search.

I would like you to provide this information in electronic format via e-mail. Please inform me if the fees of this request will exceed \$100.”

5. The complainant chased a response on 30 November 2023.
6. On 4 December 2023 QMUL confirmed that it held information but was withholding it under section 43(2) of FOIA – commercial interests. On the same date the complainant asked for an internal review on the grounds that they believed that providing the requested information was in the public interest and that this overrode commercial interests. The complainant also asked that the review look at how long QMUL had taken to provide the refusal notice.
7. QMUL provided its internal review on 16 February 2024, accepting that it had breached the legislative timeframe for responding and maintained its citing of section 43(2) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 2 February 2024 to complain about the way their request for information had been handled.
9. After the Commissioner started his investigation QMUL also explained that it was now citing section 22A of FOIA. It informed the complainant on 9 May 2024.
10. The Commissioner considers that the scope of his investigation is to look at the QMUL’s citing of sections 22A and 43(2) of FOIA to the requested information. He will also consider any procedural matters that have arisen.

Reasons for decision

Section 22A – Research information

11. This exemption applies to information obtained in the course of, or derived from, a programme of research, where the research is ongoing, and there is a plan to publish a report of the outcome.

12. FOIA does not define 'research'. The Commissioner uses the ordinary definition of the term research: a systematic investigation intended to establish facts, acquire new knowledge and reach new conclusions¹.
13. The exemption covers a wide range of information relating to research projects, and includes information that is not necessarily going to be published. Any such report may or may not include the information that has been requested, without affecting the application of the exemption to the information.
14. In addition to showing that the information falls within the category of information defined by the exemption, public authorities must demonstrate that there is a risk that disclosure of the requested information before the envisaged date of publication would or would be likely to prejudice:
 - the research programme;
 - the interests of an individual participating in the programme;
 - the interests of the authority holding the information; or
 - the interests of a different authority that is going to publish a research report.
15. As long as the research programme continues the exemption may apply, even if a report has already been published about a particular aspect of the same programme. Once the research programme has ended and all the planned reports have been published, the exemption in section 22A will no longer apply to any of the information.
16. QMUL did not cite this exemption in its original refusal notice. QMUL states that section 22A was raised at the internal review stage (though not apparently mentioned to the complainant) and "the internal reviewer did not specifically take this into account" because they found that section 43(2) was engaged. QMUL states that at the time of the request, "the programme of research was continuing with a view to a report of the research being published and disclosure prior to publication would be likely to prejudice the interests of QMUL and any journal" accepting the paper for publication.
17. QMUL contends that -

"The information was clearly obtained in the course of, or derived from, a programme of research. Prof. Szlosarek has spent 20

¹ [information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf \(ico.org.uk\)](#)

years researching in this field and continues to do so. His findings and discussions with his commercial collaborators should be protected.”

18. The information itself is broken down by QMUL as follows:

“...the trial’s arrangements, management, performance, its research paper, its data and its peer review. The emails contain graphs (showing such things as survival rates), tables of figures (showing such things as trial enrolments), statistics, enquiries about orders of cells, enquiries about survival of patients taking part in the trial, negotiations with vendors, discussions of responses to peer review comments, correspondence concerning audits, requests for comments on drafts of scientific papers, presentations and posters, cost breakdowns and so on”.

This information also contains personal data.

19. QMUL acknowledges that “it is extremely difficult to extract any information from the correspondence or attachments” that is not covered by the exemptions cited that would “make sense”.

20. QMUL explained to the Commissioner that the publication relating to the initial clinical trial was published on 15 February 2024², after the request was made but before QMUL cited this exemption. Responding to the Commissioner’s queries, QMUL explained that “The research and partnership is ongoing” and that the research began before the involvement of Polaris:

“Prof. Szlosarek made the initial discoveries in 2006 during his PhD research at QMUL (Clin Cancer Res. 2006 Dec 1;12(23):7126-31. doi: 10.1158/1078-0432.CCR-06-1101), long before any involvement of a commercial company. Subsequently, over the next 18 years, he has driven this lab research to the clinic, working with Polaris to develop a human treatment that could be tested in clinical trials. The work with Polaris, therefore, is not just a PI [Principal Investigator] running a trial for a pharmaceutical company, but a proper partnership to

² [Pegargiminas Plus First-Line Chemotherapy in Patients With Nonepithelioid Pleural Mesothelioma: The ATOMIC-Meso Randomized Clinical Trial | Oncology | JAMA Oncology | JAMA Network](#)

develop a new drug for the treatment of a neglected cancer type for which there has been little or no progress.”

21. QMUL plans future publications as do “others”. QMUL refers the Commissioner to his previous decision in [FS50867390](#) where he accepted the “implications” of releasing research information of this type.
22. The Commissioner has concluded that the withheld information is from a programme of research and that the research was ongoing at the time of the request. There was an intention to publish a report of the research and “the key publication on this research study had been accepted by a journal and was to be released imminently”. Research findings have now been published but the research is ongoing. The Commissioner accepts that there is a causal link between the disclosure of this information and an effect on the interests of QMUL because it would be likely to cause “prejudice to past, current and future research”. Were the information to be disclosed prior to peer review which serves as a method of evaluation that is generally carried out by individuals with the qualifications and knowledge to make such an appraisal it would be likely to prejudice QMUL and the research programme. The exemption is engaged.

Public interest test

23. The Commissioner will now go on to consider if there is a public interest in releasing this information.

Public interest factors in favour of releasing the requested information

24. The complainant in their internal review request regarding commercial interests provided their public interest arguments. The Commissioner’s view is that they also apply to this exemption:

“transparency in research collaborations is crucial for ensuring the integrity and ethical conduct of scientific research. Openness in sharing information and methodologies allows for peer review, replication, and further advancements in the field. In this case, disclosing the information could contribute to broader scientific progress and benefit the public at large”.
25. They explained to the Commissioner that the request was “quite urgent as it involves a breach of fiduciary duty relating to cancer patients in a potentially fraudulent clinical trial”. The complainant told QMUL that

“the terminal cancer patients involved in the clinical trial have a right to learn about the academic underpinnings of the trial in

which they are involved. If the research is dubious, then they have a right to know. The public benefit (avoiding a potential loss of life) far outweighs any interest that you can try to conjure up (especially several months past the initial review). The information is in the public interest and should be released immediately”.

Public interest factors in favour of maintaining the exemption

26. QMUL disagrees with the public interest lying in disclosure and quotes from the Commissioner’s guidance:

“that it is in the public interest to allow researchers to complete their programme of research and finalise their findings before the research programme is subjected to external scrutiny. This allows the time and space for research findings to be thoroughly examined and tested by peer review, and should ultimately add to the quality of the final research report and standards of research. It also prevents an incomplete picture arising from the publication of research that is still ongoing, or from information being published without relevant context or explanation.”³

27. It strengthens its argument by saying that, “This research into treatments for cancer must be allowed to continue unimpeded and the public interest is met by publications and other outputs emanating from this research”.

28. Additionally, QMUL underpins its argument by referencing another of the Commissioner’s decision notices [IC-282929-F5J6](#) where the University of York argued 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.’”

29. QMUL does not accept that it is “necessary or proportionate to disclose correspondence between the Principal Investigator and the sponsor of the trial and publication co-authors”. It is not in the public interest to disclose this information because of the prejudice caused to “past, current and future research”.

³ [information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf \(ico.org.uk\)](#)

Balance of the public interest

30. The Commissioner acknowledges the strength of opinion behind the complainant's argument. However, he agrees with QMUL that asking for a quantity of emails that contain information outlined in paragraph 18 that cannot be adequately understood or assessed by the public is not proportionate. The Commissioner accepts that medically trained professionals working in the same field will understand this information and that there are other ways of scrutinising research that consist of peer review and analyses of published research. There is also clinical oversight. His view is that disclosing this information, though potentially useful to some individuals, would undermine academic research by placing information in the hands of other researchers who could appropriate it or undermine it whilst it is still ongoing and before the research is complete. This is not in the public interest.
31. As the Commissioner has found that the balance of the public interest favours non-disclosure, he has not gone on to consider QMUL's citing of section 43(2) to the same information.

Procedural matters

32. Under section 1(1) of FOIA a public authority must (a) confirm whether it holds information that has been requested and (b) communicate the information to the applicant if it is held and is not exempt information.
33. Section 10(1) requires that the public authority comply with section 1 promptly, and in any event no later than 20 working days after the date of receipt of the request.
34. QMUL provided its refusal notice late and consequently did not confirm or deny whether it held the requested information within the statutory time for compliance. The Commissioner has therefore recorded a breach of sections 1(1)(a) and 10(1) of FOIA.
35. Later, QMUL also relied on an exemption it had not included in the refusal notice, breaching section 17(1) of FOIA.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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.

Janine Gregory
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