



Michael Bimmler  
By email

Reference: FOI-2017-386 (Review)

18 October 2017

Dear Mr Bimmler,

Thank you for your email of 20 September 2017 requesting a review of the response dated 19 September 2017 supplied to you in respect of your request for information dated 21 August 2017. I now reply as the officer responsible for the internal review of the handling of such requests. The purpose of the internal review procedure is to ensure that the University has complied with the Freedom of Information Act 2000 ('the Act').

In your email of 20 September 2017 you stated:

*I am writing to request an internal review of University of Cambridge's handling of my FOI request 'China Quarterly' (reference FOI-2017-386)*

*Taking the exemptions cited in turn:*

*1) The 40(3)(a)(i) exemption*

*It is not disputed that this exemption might be applicable to some "correspondents' names and contact details", however, according to ICO practice and case law, an individual examination of names and roles is needed, as senior / public-facing officials cannot be expected to be covered by the s40 exemption.*

*2) section 42(1)*

*I accept that certain records directly connected with the taking or receiving of legal advice may fall under this exemption.*

*3) section 43(2)*

*While section 43(2) may be engaged, I believe that the public interest in the University's decision-making, as a publicly funded institution, with regards to such a crucial question of academic freedom outweighs the commercial interest in maintaining confidentiality.*

*4) sections 36(2)(b)(i) and (ii)*

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*I am concerned that you appear to be applying a blanket exemption to all records concerned, which appears to subvert the principal aim of the Freedom of Information Act to further transparency. May I draw your attention to the ICO's guidance, at [https://ico.org.uk/media/for-organisations/documents/1175/section\\_36\\_prejudice\\_to\\_effective\\_conduct\\_of\\_public\\_affairs.pdf](https://ico.org.uk/media/for-organisations/documents/1175/section_36_prejudice_to_effective_conduct_of_public_affairs.pdf) which notes (at para 48):*

*"Civil servants and other public officials are expected to be impartial and robust when giving advice, and not easily deterred from expressing their views by the possibility of future disclosure. It is also possible that the threat of future disclosure could actually lead to better quality advice."*

*and (at para 49):*

*"However, once the decision in question is finalised, chilling effect arguments become more and more speculative as time passes. "*

*and (at para 61)*

*"This need for a safe space will be strongest when the issue is still live. Once the public authority has made a decision, a safe space for deliberation will no longer be required. If it was a major decision, there might still be a need for a safe space in order to properly promote, explain and defend its key points without getting unduly sidetracked. However, this can only last for a short time and the public authority would have to explain clearly why it was still required at the time of the request on the facts of each case. The timing of the request will therefore be an important factor."*

I have considered all the circumstances of the case.

With regard to section 42(1), as explained this applies to a very small number of email exchanges in which legal advice was directly sought and supplied. The exemption therefore applies and it is my view that the importance of the principle of legal privilege outweighs any public interest in the content of those limited exchanges.

With regard to section 43(2), you state in your email that the University is a publicly funded institution. In fact, substantially less than 50% of its income derives from (broadly defined) public sources. The particular information you seek relates solely to the activities of Cambridge University Press, which is part of the University as a corporate legal entity but necessarily acts as an income-generating business in the competitive environment of global academic publishing. Disclosure of the information would be likely to prejudice the commercial interests of CUP as it would reveal its strategies for operating in particular markets in a way that could be beneficial to its competitors (which are not subject to the Act). While I accept there to be some public interest in the balance that must be struck between academic freedom and commercial pressures in this context, it is my view that the public interest is not well-served by disadvantaging one commercial operator to the possible benefit of others.

With regard to sections 36(b)(i) and (ii), the section at paragraph 61 of the ICO's guidance on this exemption, cited by you in your email, in my view is the decisive factor as to why the exemption was correctly applied. This issue is still 'live' and the need to maintain a 'safe space' in which to discuss it is of current importance. While again I accept the interest that has been shown in this issue, I have concluded that the public interest is not well-served by the enforced disclosure of confidential communications of a deliberative and decision-making nature, especially where the information does

not relate to issues regarding accountability for public money, and instead relates to the University's commercial operations.

Because of my conclusion with regard to the above exemptions, I have not needed to consider whether the absolute exemption at section 40(3)(a)(i) exemption applies to all of the names and contact details of the correspondents because this is a secondary test that would only be relevant should any of the information not otherwise be exempt.

If you remain dissatisfied with the University's handling of this request or with the outcome of this review, you may raise the matter by way of appeal to the Information Commissioner who may be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF (<https://ico.org.uk/>).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Kirsty Allen', is written over a light blue horizontal line.

Kirsty Allen