

Reply to request for information under Freedom of Information of Act 2000	
Name of Requester	Elspeth V. Moray
Contact Details	request-694318-3a6d200e@whatdotheyknow.com
Date Received	26 September 2020
Deadline for Response	23 October 2020

Information requested	<p>1) Copies of all communications between NTU and the UK Government related to the GRA Analysis work, all mediums.</p> <p>2) "We also did not write the executive summary, or the overviews of each question." (blog) Please state who did: provide names, roles, and identify the employers of the people or people and government departments of those who did write the summary and overviews for each question. Please all communications on this particular area are of particular interest (any and all forms).</p> <p>3) "The team included specialists in quantitative analysis, qualitative and interpretivist research, advanced Natural Language Processing and expertise in gender and trans (including non-binary) identities." (blog) Please provide detailed information including names and qualifications for those who have "expertise in gender and trans (including non-binary) identities."</p> <p>4a) Provide peer reviewed empirical evidence of 'identity' as used. 4b) Provide source references to peer reviewed scientific studies that support the team's position re. gender identity, trans identity and non-binary humans and non-binary identities, having substance or longevity 4c) Please evidence of how one can have 'expertise' in something that does not exist - a 'non binary human'. 4d) Explain and justify the use of 'cisgender' and 'non trans women' for women. In reality, in biology, and in law, it is sex, and women are a sex not a gender, and the category, the class and the word, do not include men. There is no subset of women that are male. Women are not cisgender whatever that means to NTU. Women at 50% plus of the population are not 'non men' and not 'non trans women'. Explain why this terminology is used in an analysis; a purportedly independent professional unbiased analysis. This clearly shows a rejection of biological fact and a bias towards an ideology. 4e) Provide the definition/categorisation used to describe someone or something as 'feminist'. 4f) Evidence was provided and well referenced in support of the material realities of sex but next to no mention is made of this evidence and the deconstruction and rejection of the false premises on which Gender Ideology is based, and the current law, and the proposal. Why? 4g) I also know that there was substantial evidence and arguments put forward on the potential for fraud and the actual fraudulent misuse of 'trans' claims in prisons and elsewhere, including assaults on women in the female estate and in shelters and so on, but in the analysis dismissed as 'newspaper articles' yet NTU provided no evidence that these claims were untrue. Was this under instruction or straightforward bias? 4h) Why was there no verification of the many claims/complaints re. the GRC process against available evidence from the tribunal itself as well as FOI responses available? Why was there no analysis?</p>
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	<p>5) There was no reference to campaigns by the Equality Network including the Scottish Trans Alliance and LGBT Youth Scotland , please confirm that this was considered and explain the rejection criteria as they are not listed as a recognisable and significant campaign and influence.</p> <p>6) Please the supporting documentation and evidence for the listing of Amnesty International as a recognised/recognisable campaign.</p> <p>Note: Any and all statements made and references to intersex/DSDs/VSC must be backed up, supported with respected contemporary sources from genetics, biochemistry, neuroscience, endocrinology etc. No references to 'surveys' particularly on online, self-selected surveys in support, nor popular psychology, news articles, output by lobby groups, or pseudo-science articles, thank you.</p>
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NTU confirms that it holds:	all of the information requested	
	part of the information requested	✓
	none of the information requested	
NTU neither confirms nor denies that it holds the information requested		

NTU is able to supply all of the information requested. The information (or links to the information if it is already published) set out below	
NTU is able to supply part of the information requested. The information (or links to the information if it is already published) set out below, together with the reason for the partial response.	✓
NTU is unable to supply any of the information requested. Reasons as set out below.	

Nottingham Trent University Response:

Further to your email dated 26 September 2020 requesting information under the Freedom of Information Act 2000 (the 'Act'), the University has considered your request. Please note that the report in question was commissioned by the Government Equalities Office – the University has attempted to respond to the questions where this is possible. If you require further information with regard to the project or the report, please contact the Government Equalities Office directly at: foi-team@cabinetoffice.gov.uk.

This email acts as a Refusal Notice in accordance in accordance with Section 17 of the Act. Please see the below information:

- 1) The Government Equalities Office put out a specification (Analysis of Responses to the Reform of the Gender Recognition Act 2004 Consultation) to which the University submitted a bid (tender).

The Act gives rights of public access to information held by public authorities. These rights only apply to information held, and does not confer any explicit right to copies of original documents. Whilst a request for documents (emails, minutes, records etc) is deemed to be a valid request for information recorded within that document, most documents will contain recorded information over and above the actual wording (such as information not applicable to the request). Therefore, the University must consider the release of information within any identified correspondence.

As your request is extremely wide and asks for all communications in all mediums, the University is unable to provide any information within the Fees Limit (Section 12). The University would be required to review all correspondence and documentation relating to the project - therefore, provision of the information would take the University over the Fees Limit. Please see [Refusal Notice below](#).

In addition to the Fees Limit exemption above, the University has considered documentation/correspondence/emails any other medium of documentation to be exempt by virtue of Section 41 – Confidentiality; Section 43(2) – Commercial Interests; and Section 40(2) – Personal Data.

- 2) The Government Equalities Office wrote the executive summary – the information in response to your query is not held. You can direct your question to the Government Equality's Office via their FOI process; foi-team@cabinetoffice.gov.uk. You can find out more about the Government Equalities Office here: <https://www.gov.uk/government/organisations/government-equalities-office>. You can find further information on making a Freedom of Information Request to the Government Equalities Office here: <https://www.gov.uk/make-a-freedom-of-information-request>.
- 3) Although the University holds the information requested – it will not release the information at this time. The University did not identify all the individuals (the three University staff members are named within the report) involved in the project as it considered this to be sensitive and it may provoke emotive responses. The University considers the release of this information to be exempt by virtue of Section 38(1) – Health and Safety. Please see [Refusal Notice below](#).
- 4) The University has considered that your questions under a)-f) do not fall into the remit of the Act. These are not questions which can be provided with a factual response but rather contest notions and points of theory. Therefore, the University has not responded to these questions as it considers the information not held.

With regard to your question 4g) and 4h), the University did not express an opinion. Please see the method statement of the report (section 3) for further information on the information analysed and how this was undertaken.

- 5) Again, question 5 is not a question that should be considered under the remit of the Act. This relates more to your opinion about what you believe should or should not have been considered as part of the analysis. You are referred to page 145 and 146 of the report which states 'there may have been other small-scale campaigns which could not be identified'.
- 6) Please see the method statement of the report.

As set out above, a number of your questions relate to your opinion of what should or should not have been part of the analysis for this project. As you will be aware, from the published report, this analysis was undertaken on behalf of the Government Equalities Office and it is recommended that you direct your questions to them for further information on the consultation and its published responses.

Refusal Notices:

Section 12 - Fees Limit

Under the Freedom of Information Act ("the Act"), Section 12, the University is not under a duty to comply with a request where it estimates that the cost of doing so would exceed the limit of £450, calculated in accordance with the Regulations made under the Freedom of Information Act at £25 per person per hour for a total of 18 hours (The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. In estimating whether the cost of complying with any request exceeds the limit of £450, the University is entitled to consider the costs it reasonably expects to incur in the information-retrieval process e.g. locating the information (or a document containing it), retrieving the information (or a document containing it) and extracting the information from a document containing it. For the reasons set out above, the University has

estimated that complying with your request would exceed the prescribed limit and is, therefore, under no obligation to disclose any of the requested information.

Section 41 – Confidentiality

Whilst the University can confirm that its correspondence with the Government Equalities Office regarding the consultation and analysis undertaken on behalf of the Government, it will not provide this information as it is deemed to be exempt under Section 41 – Confidentiality. The Section 41 exemption applies as correspondence/documentation supplied by a third party in relation to a government consultation is considered to have been shared in circumstances giving rise to a legal duty of confidence, and disclosure would breach that duty. Release of documentation and correspondence would place into the public domain information relating to individual responses to the consultation.

Section 43(2) - Commercial Interests

Whilst the University confirms that it holds information requested relating to correspondence, the University would not look to provide this information as it is deemed to be exempt under Section 43(2) - Commercial Interests.

The Section 43(2) exemption applies in this respect as information is exempt if its disclosure under the Act would, or would be likely to, prejudice the commercial interests of any person/company (this can include the University). The University has concluded that releasing the information requested is likely to prejudice the University's commercial interests, as it would release commercially sensitive information into the public domain.

The higher education sector is a very competitive environment, and competition between institutions is increasing further as a result of the changes which have taken place in the structure and source of funding for Higher Education over recent years. Universities will compete to be involved in research, in particular and it is considered that release of documentation into the public domain would reduce the University's ability to negotiate and compete in a commercial environment. In addition, release of documentation would cause damage to not only the University's but also the Government's business reputation and the confidence that our customers, suppliers or investors may have in it. The Government Equalities Office would not expect correspondence/documentation between the parties which will include, but is not limited to, research and plans relating to the consultation, to be placed into the public domain – thus placing such information into the public domain could weaken not only the University's position in a competitive environment but that of the Government by revealing commercially sensitive information or information of potential usefulness to our competitors.

In addition, the instruction in relation to this consultation was received from a third party (Government Equalities Office) instructing research/analysis on their behalf, and thus consideration needs to be undertaken of the Government's commercial interests also. It is in the public interest to maintain the relationship between the University and the Government. Disclosure of information not intended for the public domain would damage this relationship and hence the commercial interests of both parties - where commercially sensitive information has been provided by a third party (Government Equalities Office) to the University.

There is a clear public interest in making appropriate information available to the public and the release of information promotes transparency and provides reassurance to the public. This in turn, serves to support and maintain public confidence in universities and the undertaking of research. In contrast, there is also a public interest in ensuring that universities maintain a relationship with third parties with regard to contracted research. It is, therefore, in the public interest to ensure that the University can compete in this competitive market on a level playing field, and not be disadvantaged within the sector. The exemption relating to Section 43(2) is subject to the Public Interest Test under the Act. This means that the University must consider whether the public interest in

maintaining the exemption outweighs the public interest in withholding it. The University has considered that the Public Interest Test favours the withholding of the information requested, to ensure that the University can compete in a competitive market on a level playing field, and not be disadvantaged within the sector.

Section 40(2) – Personal Data

The University also considers the request for all correspondence/documentation to be exempt under Section 40(2) Personal Information. This exemption applies when the request for information is made by someone other than the data subject and complying with the request would contravene the one or more of the principles set out under the General Data Protection Regulation 2016 and/or the Data Protection Act 2018 (Article 5(1) of the GDPR), or would likely cause unwarranted substantial damage or substantial distress to the individuals concerned. The University must consider the reasonable expectations of the individuals (in this case our those who submitted their comments in response to the consultation) when considering disclosure of Personal Data and/or Special Category Data under the Act. The expectations of individuals who respond to Government consultations, when considering whether to release their individual responses, is that such information is not shared outside the consultation unless it is done so with their express consent. Part of the analysis work undertaken by the University was to review the consultation responses which were provided to the University by the Government Equalities Office.

To comply with the Data Protection Act 2018 and the UK the General Data Protection Regulation (EU) 2016/679 (as applicable) and the Privacy and Electronic Communications (EC Directive) Regulations and any guidance or codes of practice issued by the Information Commissioner from time to time (all as amended, updated or re-enacted from time to time), disclosure of personal data under the Freedom of Information Act must take into account the reasonable expectations of the individuals concerned. The expectations of those who responded to the Government consultation and their thoughts and opinions, is that their responses which would include personal data are not shared with an external organisation or released into the public domain. In addition, release of such information into the public domain could have a detrimental effect on relationships between the individuals, the Government and the University. In such circumstances the rights of individuals concerned outweigh any legitimate or public interest. The University, therefore, considers that the detriment to the individuals who responded to the consultation, as set out above, is not outweighed by any legitimate or public interest.

Section 38(1) – Health and Safety

Section 38(1) Health and Safety exemption applies in this respect as it provides that information falls within this exemption where disclosure would or would likely endanger the physical or mental health or safety of any individual; in this case those individuals involved in the project/consultation in response to question 3 of your request. The University believes that release of a list of specific individuals would place into the public domain information relating to those individuals which may provoke emotive responses and place them at risk by jeopardising or negating any efforts by the Government or the University to protect those individuals.

Sections 43(2) and 38(1) are subject to the Public Interest Test under the Act. There is a clear public interest in making appropriate information available to the public and the release of information promotes transparency and provides reassurance to the public. This in turn, serves to support and maintain public confidence in universities and the undertaking of research. In contrast, there is also a public interest in ensuring that universities maintain a relationship with third parties with regard to contracted research and those involved in the research. Therefore, the University must consider whether the public interest in maintaining the exemption outweighs the public interest in withholding it. The University has considered that the Public Interest Test favours the withholding of

the information requested, to ensure that the University can compete in a competitive market on a level playing field, and not be disadvantaged within the sector; and individuals involved in the project are protected.

In reaching this decision, the University identified the following factors in favour of disclosure, but has considered that they were outweighed by the reasons set out above against disclosure; these factors were:

- Promoting accountability and transparency in research matters in the public sector;
- Increasing public understanding of research activities.

Although the University cannot fully meet your request at this time, if you have any further information needs in the future, please do not hesitate to contact foi.enquiries@ntu.ac.uk.

You have the right to request an internal review following our decision. You can request an internal review by contacting foi.enquiries@ntu.ac.uk within 40 working days of the date of this response. Further information on the University's internal review procedure under Freedom of Information can be found at <https://www.ntu.ac.uk/about-us/governance/freedom-of-information>.

You also have the right, under Section 50 of the Freedom of Information Act 2000 to apply to the Information Commission for a decision as to whether your request for information has been dealt with in accordance with the requirements of Part 1 of the Act. The Commissioner will, however, normally require you to pursue an internal appeal to the University prior to considering such an application. You can find further information about the Act from the Information Commissioner at <https://ico.org.uk/>.

Yours sincerely

Lindsey Peggs
Legal Services

FOI Nottingham Trent University
foi.enquiries@ntu.ac.uk