



By email to: ak@oxfordwhisperer.uk

Ref. FOI/IR/20210907

18 November 2021

Dear Mr Kirsch,

Review of response to request under the Freedom of Information Act (FOIA)

I refer to your email of 7 September 2021, requesting the University to carry out an internal review of the response of Kellogg College to your FOI request of 11 March 2021, which it sent to you on 1 September 2021. I apologise for the delay in replying, which has been due to high levels of workload.

2 Original request and response

Your original request was for:

- (a) Minutes and papers relating to the discussion at the college's Governing Body and the Finance and Resources Committee of a payment of £733 made to the MRC Ball President in 2020 (the 'payment');
- (b) The dates of the meetings at which the payment was discussed at the Governing Body and Finance and Resources Committee;
- (c) The composition of the Governing Body and the Finance and Resources Committee; and
- (d) The statutes, regulations, by-laws and policies of Kellogg College.

The college provided in full the information requested in items (b) to (d) above.

In response to item (a), the college released the relevant minutes of the meetings of the Governing Body held on 17 June 2020 and 10 March 2021 and those of the meetings of the Finance and Resources Committee held on 3 June 2020 and 24 February 2021. However, it withheld the minutes of the meetings of the Governing Body held on 21 October and 2 December 2020 and those of the meetings of the Finance and Resources Committee held on 30 September and 18 November 2020. It also withheld the paper submitted to the Finance and Resources Committee on 30 September 2020, which set out the results of an investigation into the payment. The college withheld this information on the basis that it was exempt from disclosure under section 40(2), which provides an exemption for information that is the personal data of an individual other than the requester, where disclosure would breach any of the data protection principles in Article 5 of the General Data Protection Regulation (GDPR).

3 Internal review request

You have asked us to review the college's response on the following grounds:

- a) the exemption in s.40(2) has been applied too broadly, particularly as there is already information about the payment in the public domain;
- b) there is a public interest in transparency and accountability for the expenditure of college monies; and
- c) other supporting documents have been withheld.

4 Internal review

Grounds (a) and (b) above – Application of s.40(2)

I have considered, firstly, whether any of the withheld information is not personal data (and therefore outside the scope of the exemption); and, secondly, whether there is a case for disclosing any of the withheld information that is personal data, having regard to the [ICO's guidance on section 40\(2\)](#).

As regards the first point, I have reviewed all the information that has been withheld. I am satisfied that the withheld minutes constitute the personal data of the individuals involved (the 'data subjects') namely, information relating to identified or identifiable individuals. However, the paper that was discussed at the meeting of the Finance and Resources Committee on 30 September 2020, which was withheld in its entirety, contains some information that is not personal data of the data subjects and that is not otherwise exempt. This information can therefore be disclosed. A redacted copy of the paper is attached.

As regards the second point, the ICO guidance requires a public authority to consider whether there is any legitimate public interest in the information requested; whether disclosure is necessary to meet that interest; and, if so, whether that interest overrides the interests and rights of the data subjects affected.

There is a legitimate public interest in knowing that a body in receipt of public funds has adequate financial controls in place to ensure that those funds are spent appropriately and effectively. There may also be a public interest in transparency and accountability in respect of specific examples of expenditure. Case law has established that there must be a pressing social need for any interference with privacy rights and that any interference must be proportionate¹. It is difficult to accept that there is a pressing social need for disclosure in this particular case. The amount of money involved is very small, when considered in relation to the total expenditure of the college or University, and was one-off in nature. It did not involve expenditure by senior officials.

The college has taken action to meet any public interest in this matter. It has carried out an investigation into the payment and submitted a report to both its Finance and Resources Committee and Governing Body. It has found no evidence of fraudulent conduct but has found control weaknesses in MCR procedures. It is working with the MCR to ensure that new or improved procedures are introduced. To meet the interest in transparency, and in recognition of the interest in this matter within the student body, it has issued a statement to members of the MRC Committee and to those members of the MRC who have raised concerns in writing, summarizing its findings and its proposed remediation. I am satisfied therefore that disclosure is not necessary to meet a legitimate public interest.

¹ Corporate Officer of the House of Commons V Information Commissioner and Brooke, Leapman and Ungood-Thomas (2008) EWHC 1084 (Admin), para 43

Even if disclosure were necessary to meet a legitimate public interest, I do not consider that interest to be sufficient to outweigh the interests and rights of the data subjects under the UK GDPR and Data Protection Act 2018. The data subjects are students, and do not occupy senior positions within the college or University. Given this, they have a reasonable and legitimate expectation that their personal data will not be disclosed under the FOIA without their consent. They have already suffered a degree of distress and anxiety as a result of the publicity given to this matter by the publication of information on websites and social media. Disclosure of the withheld information, which differs from the information already published, would expose them to further distress.

For these reasons, I am satisfied that the exemption in s.40(2) has been applied appropriately, and that there is insufficient justification for disclosure of the withheld information.

Ground (c) above – Non-disclosure of other supporting documents

The college has confirmed that there is no information falling within the scope of your request, other than the relevant minutes and the paper submitted to the Finance and Resources Committee on 30 September 2020.

It is open to you to apply to the Information Commissioner for a decision as to whether your request for information has been handled in accordance with the FOIA. Further information for submitting complaints to the Information Commissioner is available at <https://ico.org.uk/make-a-complaint/>.

Yours sincerely

Max Todd
Deputy Data Protection Officer and Deputy Head of Information Compliance
University of Oxford