

[REDACTED]

25 October 2024

Dear [REDACTED],

**Internal Review request: IR2024/00328**

Thank you for your Internal Review request received on the 17 April 2024 in which you asked us to reconsider our response to your request, FOI2024/00247.

In your email you have requested the following:

*I am writing to request an internal review of Medical Research Council's handling of my FOI request 'communications about DARE UK', to the aspect of your response which said "Some information related to the resignation' of the DARE UK Director has also been withheld. We consider that this information constitutes personal data."*

*While redacting personal data is perfectly fine, that MRC has provided no information whatsoever about the communications that led to the DARE UK Director "leaving".*

*While the personal data in those communications should be redacted, there will be other parts of those communications that are not personal data. Even if most paragraphs of communications were specifically redacted, there is a public interest in knowing the structure and volume as well as the non-personal-data aspects of those communications. I challenge MRC's assertion that there is nothing other than personal data in those withheld documents to the extent that even filenames were withheld.*

**Our response**

I have reviewed your request and the information you asked for in this Internal Review.

As you are aware, we engaged Section 40(2) of the Freedom of Information Act to withhold information from disclosure that was in scope of your request, as we determined that it was considered personal data of an individual. My conclusion from this internal review is that the exemption was engaged correctly and should be upheld.

Additionally, I have determined that Section 41, information provided in confidence, also applies to some of the withheld information and has been engaged following this internal review. Further information on this exemption is provide below.

**Section 40(2) – Personal Information**

The information withheld from disclosure in our original response directly relates to a specific individual and their resignation as the DARE UK Director, for which we engaged the exemption at Section 40(2) of the FOIA.

To engage Section 40(2), it is necessary to consider Article 5(1)(a) of the UK GDPR which states that personal data shall be: *"processed lawfully, fairly and in a transparent manner in relation to the data subject"*.

To determine whether or not disclosure is lawful, I have considered whether there is a lawful basis for processing in Article 6(1) of the UK GDPR. The lawful basis most likely to be relevant in relation to a request for information under FOIA is Article 6(1)(f); legitimate interests.

In considering the application of Article 6(1)(f) for a request for information under FOIA it is necessary to consider the following three-part test:

- i. **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information
- ii. **Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question
- iii. **Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject

### **Legitimate interests**

I have identified that there is a legitimate interest in a public authority such as UKRI operating transparently and that this sometimes also requires revealing information relating to senior public facing officials. However, information regarding the Director of DARE UK's resignation was addressed in a [public statement](#)<sup>1</sup>, on the DARE UK website, and UKRI believe that this meets the obligation to be open and transparent on this matter.

The information in scope contained a limited number of emails which were exchanged with others in a personal capacity and not intended for external disclosure. Additionally, this information would not provide any additional context or improve understanding around this individual's resignation beyond what has already been disclosed publicly.

### **Necessity test**

UKRI acts on the presumption of withholding personal data relating to individuals from disclosure under the FOI Act unless there is a significant public or legitimate interest that would supersede the individual's rights. We have reminded ourselves of our responsibilities under UK-GDPR and as an organisation with a duty of care. Whilst the resignation itself was of public interest, I have concluded that the disclosure of individual's personal exchanges would be of far less interest, therefore I have determined that this did not meet either the legitimate interest test or the necessity test.

### **Balancing test**

In considering this information I am unconvinced that there are sufficient arguments to satisfy the condition to disclose the information, as it is not clearly evident how disclosing this information would provide any greater insight or understanding.

Individuals have an expectation that the content of their emails or letters may be disclosable under FOI, but that their personal details and contact information would be considered exempt, unless under exceptional circumstances.

This approach is always considered appropriate for junior staff and third parties, however additional consideration is given to senior managers information as UKRI recognises that that there may be instances where senior staff and those in public facing roles may not expect their details to remain confidential. That being said, this request related to the resignation of a single individual and, beyond the information published in the public statement, there is an expectation that the personal information of individuals relating to their employment will not be disclosed into the public domain.

### **Conclusion**

I recognise and give weight to the importance of transparency and the legitimate interest which the public have in understanding the operations of public bodies. However, I have balanced this against the expectations individuals have of personal information relating to their employment being disclosed, particularly by a third party; release of this information would be 'to the world', the UK-GDPR would be applicable to the processing of their personal data, and that the Article 8 ECHR rights of individuals would be engaged.

In conclusion I have considered that ensuring the protection of individuals' personal information outweighs the public interest in disclosing the information in scope and that disclosure of the information would not be appropriate.

Individuals have an expectation that their personal information will not be disclosed into the public domain unless there is a significant and compelling justification to do so. The exemption was engaged correctly and I have determined through the course of this internal review that this should remain upheld.

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<sup>1</sup> <https://dareuk.org.uk/director-of-dare-uk-announces-he-is-leaving>

## **Section 41 - Information Provided in Confidence**

During the course of this internal review, it has become evident that some of the information in scope would also fall under the exemption at Section 41, information provided in confidence.

Section 41 is an absolute exemption and requires all parts of the exemption to be engaged, the criteria to be considered is outlined by the ICO as follows:

*“Information will be covered by Section 41 if it was obtained by UKRI from any other person; its disclosure would constitute a breach of confidence; a legal person could bring a court action for that breach of confidence, and that court action would be likely to succeed”*

In assessing whether the exemption applies UKRI needs to determine whether the information has:

- the quality of confidence
- whether it was imparted in circumstances importing an obligation of confidence and
- whether disclosure would be an unauthorised use of the information to the detriment of the confider.

### **The authority must have obtained the information from another person**

In this case most of the emails and attachments have been sent by third parties who are external to UKRI and who would constitute ‘any other person’ under the law. These emails were sent in confidence giving the understanding that the information should not be disclosed further than the recipients.

These emails could be viewed as the personal data of the parties concerned and so are worthy of protection as they have a genuine interest in the contents remaining confidential. The information therefore retains the necessary quality of confidence.

The information contained in the emails is not otherwise accessible; UKRI believes that information on the resignation was not made public until 25 January 2024, when the statement was published by DARE UK, and at the time the emails were sent, it was understood that the matter was private and confidential and should be held in confidence, so the information was not otherwise accessible.

### **Whether it was imparted in circumstances importing an obligation of confidence**

There is an obligation of confidence on UKRI not to disclose information sent to us about a private matter pertaining to the resignation of a senior official in a funded body; this confidence is vital to ensure a successful handover without generating public uncertainty about the future of the organisation.

### **Whether disclosure would be an unauthorised use of the information to the detriment of the confider.**

Disclosure would cause detriment to the parties involved as they may have sought to keep the information within a limited circle, to avoid public speculation which may have damaged the future of DARE UK.

If the emails were to be placed in the public domain, it would jeopardise the confidentiality in which DARE UK communicates with MRC and UKRI on other equally confidential matters, hindering the effective operations of both organisations. This would lead to a potential lack of confidence in the system to the detriment of all. In the circumstances the parties involved would be able to bring a claim for breach of confidence. UKRI would be likely to face legal action for breach of confidence if the decision was to release information related to the DARE UK Director’s resignation.

There is also a risk that UKRI and MRC may be subject to legal action if as a result, disclosure led to names being inadvertently revealed or other material information provided under a duty of confidence. I have determined that UKRI would not have a public interest defence for breach of confidence as there is no public interest in disclosure which overrides the competing public interest in maintaining the duty of confidence. This confirms that Section 41 should be engaged for some of the information in scope.

If you are not content with the outcome of the internal review, you may apply to refer the matter to the Information Commissioner for a decision. The Information Commissioner can be contacted at: [www.ico.org.uk](http://www.ico.org.uk).

If you wish to raise a complaint regarding the service you have received or the conduct of any UKRI staff in relation to your request, please see [UKRI's complaints policy](#)<sup>2</sup>.

Yours sincerely,

  
Information Rights Team  
Information Governance  
UK Research and Innovation  
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<sup>2</sup> <https://www.ukri.org/who-we-are/contact-us/make-a-complaint/#skipnav-target>