



[REDACTED]

11 April 2024

Dear [REDACTED],

**Freedom of Information request: FOI2024/00012**

Thank you for your Freedom of Information request; I apologise for the delay in responding. In your email, received on the 5 January, you requested the following:

**Your request:**

*In issuing this submission, I make reference to the 2022 update on Researchfish, published by you here: <https://www.ukri.org/news/ukri-update-on-researchfish/>*

*Please conduct a search in your systems from January 2022 to December 2022 and kindly provide me with:*

*a) Internal discussions of this incident that document how this affair evolved from UKRI's perspective. The term internal discussions includes but it is not limited to material contained in e-mails, WhatsApp messages, SMS, minutes, agendas, etc.*

*In focussing this part of the request, please consider that the relevant documents and communications will likely stem from members of the UKRI Board, the Executive committee, and other subcommittees such as ARAC, OCC, People & Finance, etc.*

*In focussing this part of the request, you can use reasonable keywords such as "Researchfish", "Tweets", "Interfolio", "Researchers", "Data protection", etc. These are just examples to aid you in your search. Conduct and guide the search from the moment complaints started to arrive up until the point UKRI considered the matter to be settled or December 2022.*

*b) External discussions between UKRI and Researchfish/Interfolio about this affair. Note I am not interested in the e-mails that Researchfish sent UKRI to complain about the Tweets. I am interested in discussions and communications that followed after the complaints started to arrive. Once again, conduct the search from 01-2022 to 12-2022, and restrict it through appropriate keywords such as those shown in (a). Consider that the communications will likely be conducted with accounts ending in @researchfish.com or @interfolio.com, which should help you when refining this request.*

**Our response**

I can confirm that UK Research and Innovation (UKRI) holds some information relevant to your request. Please see the information below and attached.

In considering your request we have interpreted the scope of the request to cover information that was produced in relation to internal discussions of the handling of the Researchfish twitter incident and external discussions with Interfolio, the provider of the Researchfish platform. However, we have determined that exemptions under the FOIA would apply to some of the information we hold, this information has been redacted from the information provided with this response in the attached Pack A and Pack B.

The following exemptions were considered to apply:

- Section 36(2)(b)(i) – is engaged to protect the safe space for the free and frank provision of advice.
- Section 36(2)(b)(ii) – is engaged to protect the safe space for the free and frank exchange of views for the purposes of deliberation.
- Section 43(2) – is engaged to protect any commercial information related to UKRI's contract with Interfolio.
- Section 42(1) – legal professional privilege is engaged to protect UKRI's ability to seek legal advice without interference.
- Section 40(2)) is engaged to protect personal data.

For sections 36(2)(b)(i) and 36(2)(b)(ii), the opinion of UKRI's Chief Executive Officer, as UKRI's Qualified Person, was sought on engaging this exemption. As this and the other exemptions identified are qualified exemptions, we were then required to consider the public interest both in favour of, and against, releasing the information. We can also confirm that the subsequent consideration of the public interest test, for this and all other qualified exemptions was undertaken by senior managers with no involvement with this incident.

### **Outcome of consideration of Section 36 – Prejudice to the effective conduct of public affairs**

As UKRI's Qualified Person, Professor Dame Ottoline Leyser confirmed her opinion that sections 36(2)(b)(i) and 36(2)(b)(ii) of the FOIA would be engaged, as disclosure would inhibit the free and frank provision of advice and exchange of views for the purposes of deliberation. The issues raised during the response to incident addressed legal, ethical, and commercial issues which required rapid, candid discussion and debate on a developing situation.

### **The Public Interest Test for qualified exemptions identified**

Below we have explored the overall public interest argument in favour of disclosure. Arguments in favour of withholding the information are outlined under each exemption.

### **Overall public interest in favour of disclosure**

The following arguments were considered in favour of disclosure for all exemptions identified:

- There is public interest in UKRI being transparent in its processes and decision making to provide clarity and confidence in UKRI's role and function.
- There is an ongoing debate about research outcome monitoring freedom of speech and academic freedom and UKRI's position, and disclosure may enhance understanding of these issues.
- There is also a public interest in transparency in order to ensure the accountability of public organisations and how they spend public funding.

### **Coverage of exemptions and public interest in favour of withholding the information**

#### **Section 36(2) effective conduct of public affairs**

Arguments in favour of engaging s36(2) - to ensure effective conduct of public affairs - are that disclosure would, or would be likely to, inhibit the free and frank provision of advice (36(2)(b)(i)) and the exchange of views (36(2)(b)(ii)). Disclosure would be likely to inhibit free and frank communications between officials for the reasons below:

- Disclosure is likely to inhibit the free and frank provision of advice and exchange of views during UKRI's investigations and responses to high-profile, fast-moving incidents. It is important that free discussions can take place both within UKRI, and between UKRI and other bodies, including frank articulation of disagreements.
- Some discussions were conducted at pace to allow UKRI to respond effectively to the rapidly developing situation. Disclosure may therefore lead to the inhibition of any future free and frank provision of advice and exchange of views severely undermining the safe space that is required for a thorough incident response to be

conducted. This would be detrimental to the process of ensuring the best possible solution is arrived at and the investigation carried out without fear of public interference. Disclosure would result in a chilling effect on any future discussions negatively impacting processes designed to address incident responses.

- The information contains specific and detailed information on the evolution of the incident in a rapidly moving situation. Some of these views or initial assumptions may have in hindsight appeared premature. Ensuring a safe space for the investigation of the incident and the exchange of information in real time without the fear that any initial misunderstandings may cause detriment to officials is crucial to an effective incident response. In the absence of this safe space officials would only share information that they were certain of, with a resultant strongly adverse inhibition on the free flow of thinking and information at a critical point in the incident response.
- This prejudice may be substantive because the issue of the Researchfish contract is currently still live, and disclosure may prejudice the relationship between UKRI and Interfolio, the providers of the Researchfish platform.

### **Section 43(2) Commercial Prejudice**

We have determined that some information such as the service level agreement (SLA) and contract with Researchfish fall under the scope of Section 43(2) of the FOIA. This exemption is used where disclosure would likely result in a person's (an individual, a company, the public authority itself or any other legal entities) commercial interests being prejudiced. In this case UKRI's commercial interests would be impacted as it would negatively impact UKRI if it were seen to disclose confidential information and it would not be in the best interests of UKRI to disclose contract information.

### **Public interest arguments in favour of withholding the information**

- There is a public interest in protecting commercially sensitive information such as contracts and SLAs, which contains commercially sensitive information such as business and project plans, price and cost schedule information, and extensive descriptions of the service and the approach proposed, including service delivery information. These details, which were disclosed to UKRI in confidence could be taken advantage of by competitors in planning competing strategies for further business opportunities.
- Releasing such detailed information may adversely affect future negotiation opportunities for UKRI.
- Releasing information provided in confidence to UKRI is likely to damage trust and ongoing relationships with other organisations. UKRI may be seen as a 'confidentiality' risk and relationships may become untenable if third parties cannot be certain that their commercial information will remain confidential when held by UKRI.

### **Section 42(1) legal professional privilege**

Section 42(1) applies to some information which is legal advice. It is important that communications between UKRI and its legal advisors are protected and there is no justification for the disclosure of these communications that outweighs protecting this information which remains confidential.

### **Arguments in favour of engaging section 42(1) legal professional privilege.**

- Decisions by public authorities should be made in a fully informed legal context. There is a strong public interest in protecting communications between legal advisors and clients which is considered to be confidential and to protect the ability for UKRI to be able to seek out legal advice. Without recourse to such advice, a public authority's decision making may be compromised because it will not be fully informed.
- Confidentiality between professional legal advisors and clients is the foundation of legal and professional privilege as it ensures open, honest, and frank exchanges between the client and the advisor. This will then result

in high quality legal advice that fully addresses any issues that are raised during these confidential discussions. Having comprehensive advice that takes into account all factors, including potential weaknesses, allows public organisations, such as UKRI, to make fully informed and quality decisions. There is less likelihood that such advice would be provided if those giving it knew it was to be made public. There is no clear, compelling or specific justification for disclosure that outweighs the interest in protecting communications between lawyer and client which the client supposes to be confidential.

## Overall assessment of the weight of public interest arguments

UKRI have concluded that at this time the balance of the public interest lies in favour of applying the above exemptions. Therefore, the redacted information has been withheld from disclosure.

## Section 40(2) personal data

Some information related to names and contact details of individuals has been withheld. We consider that this information constitutes personal data and falls under the exemption at section 40(2) of the FOI Act. Section 40(2) exempts personal information such as names of individuals from disclosure if that information relates to someone other than the applicant, and if disclosure of that information would, amongst other things, contravene one of the data protection principles. Disclosing this information would contravene the first Data Protection Principle as defined under Section 86 of the Data Protection Act 2018 and Article 5 of the UK General Data Protection Regulation (UK GDPR).

Section 40(2) is an absolute exemption and does not require a public interest test.

If you have any queries regarding our response or you are unhappy with the outcome of your request and wish to seek an internal review of the decision, please contact within the next 40 working days:

Head of Information Governance  
Email: [foi@ukri.org](mailto:foi@ukri.org)

Please quote the reference number above in any future communications.

If you are still not content with the outcome of the internal review, you may apply to refer the matter to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted the review procedure provided by UKRI. 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: <https://www.ukri.org/about-us/policies-and-standards/complaints-policy/>

Yours sincerely,

  
Information Governance  
Information Rights Team  
UK Research and Innovation  
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