



[REDACTED]

21 July 2022

Dear [REDACTED]

Freedom of Information request: FOI2022/00176

Thank you for your Freedom of Information request received on the 11 May in which you requested the following:

Your request:

I would like to have access to the research funding application for the research project 'Assessing the Unitary Patent and the Unified Patent Court', as well as to all communications between the funding body and the research project's people.

I am placing this request under the provisions of the Freedom of Information Act.

If some parts of the requested information cannot be disclosed due to legal reasons, the remaining parts of the relevant document(s) can still be communicated to me.

Clarification: 30 May

First, I am not seeking information about communications that do not relate to the research project: 'Assessing the Unitary Patent and the Unified Patent Court'.

Second, as you specify since the application for funding was made in March 2014, the request for information regards:

- a) the content of that application;*
- b) all communications that followed from the moment that application was submitted until the completion of the project in June 2016, and*
- c) all communications that the funding body had with the research project's people from the end of the project in June 2016 onwards.*

For example, this could be to check the implementation of certain post-completion requirements for which the research fund was provided, e.g. a requirement to disseminate the promised research results on the basis of open access. Please note that I am not seeking access to post-completion (June 2016-onwards) communications that have to do with any remaining research funding payment and, in general, purely logistical information about transferring of funds to bank accounts, etc., is not part of the scope of my FIA request.

In general, I believe the communications between a research funding body and the research people involved should not be many, and there is a clear public interest to have access to the funding process and relevant communications of projects that relate to issues of public interest, such as that to which the current FIA request relates.

Our response

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

We are providing communications between UKRI/UKSBS and the Principal Investigator of the project, as well as a copy of the grant application. Please find these documents attached with this response. Some information in the documents provided has been withheld under the following exemptions which are explained below.

- Section 40(2) personal data
- Section 41 Information provided in confidence
- Section 43(2) Commercial Prejudice

Section 40(2) personal data

Names and contact details that are not already in the public domain have been withheld under section 40(2) personal data of the FOIA. Section 40(2) exempts personal information 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 in Article 5(1) of the UK General Data Protection Regulation (UK GDPR) and section 34(1) of the Data Protection Act 2018. In this case, we believe disclosure would contravene the first data protection principle, which provides that processing of personal data is lawful and fair.

Section 40(2) is an absolute exemption and UKRI is not obliged to consider whether the public interest favours disclosing the information.

Section 41 information provided in confidence

Some information in the document titled 'Siebel communications' has been withheld under section 41 information provided in confidence as it relates to feedback and scores from peer reviewers. To explain further, this is part of the confidential peer review process, and UKRI undertakes to keep confidential all information in relation to peer review. Peer reviewers must agree to abide by general requirements on confidentiality contained in peer review protocols and by the confidentiality requirements of the [Use of Grant Proposal and Training Grant information addendum](https://www.ukri.org/wp-content/uploads/2021/03/UKRI-310321-Use-of-grant-proposal-and-training-grant-information-addendum-V2.pdf)¹. If released, we believe it would result in an actionable breach of confidence. As this exemption is absolute there is no requirement to conduct a public interest test.

Some information in the grant application has been redacted as it falls under the exemption at section 41(1) of the FOIA information provided in confidence. As organisations submit grant applications in confidence, we consider the redacted information in the application is exempt under Section 41 of the FOIA. To explain further, applicants submit their grant applications in confidence with the understanding that details of their application will remain confidential and only a brief overview will be published. Additionally, part of the project was set back as the Unitary Patent and Unified Court could not be implemented as planned when the UK exited the EU, and therefore some project activities and analysis is still being undertaken. If released, we believe it would result in an actionable breach of confidence. As this exemption is absolute there is no requirement to conduct a public interest test.

Section 43(2) commercial prejudice

We also consider that the redacted information in relation to the grant application falls under the exemption at 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.

This is a qualified exemption, meaning that a test was carried out to determine whether the public interest outweighs the requirement for commercial confidentiality.

Public interest in favour of disclosure

- There is a general public interest in the disclosure of this information to ensure transparency and openness of a public organisation.

¹ <https://www.ukri.org/wp-content/uploads/2021/03/UKRI-310321-Use-of-grant-proposal-and-training-grant-information-addendum-V2.pdf>

- There is also a public interest in transparency in order to ensure the accountability of public organisations and how they spend public funding.

Public interest in favour of withholding the information

- Applicants apply for funding knowing that if they achieve success only a brief overview of their successful application will be publicly available, everything else will remain confidential, including their original application.
- As such disclosing the information requested is likely to reduce the applicant's commercial advantage and thereby harm its commercial interests in a highly competitive field. We believe disclosing this information via FOI confers a disadvantage to applicants which would likely materially disadvantage and harm their interests, particularly in their ability to compete for grants.
- As explained previously the implementation of the Unitary Patent and Unified Court could not go ahead as planned when the UK exited the EU. This setback has only been resolved this year and the Patent and the Court are now due to begin operating later this year. As such, some of the analysis in the grant proposal can only be carried out now and remains commercially sensitive.
- Releasing this information is likely to damage the possibility of ongoing relationships between UKRI and other organisations. Relationships may become untenable if third parties cannot be certain that their grant applications will remain confidential when held by UKRI.
- Breaching the commercial interest may also adversely affect future negotiation opportunities for UKRI. UKRI may be seen as a 'confidentiality' risk if it routinely releases information relating to grant applications into the public domain, particularly where this is third party information.

Taking the above arguments into consideration, we reached the decision that the need for commercial confidentiality outweighs the public interest in disclosure; therefore, the information is exempt from disclosure.

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:

Head of Information Governance


Email: foi@ukri.org or infogovernance@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.

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,


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