

UPPER TRIBUNAL CASE No: UA-2024-000012-GIA
[2024] UKUT 422 (AAC)
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conversations, and all other records within the British Library and external communications, correspondences, meeting minutes, emails, notes, recordings of telephone conversations, and all other records between the British Library and the London School of Economics and Political Science (LSE) and/or the University of London and/or any other third parties in 2015.

Please send me copies of all requests made in relation to the referenced Ph.D. thesis in 2015.

3. The Library refused the request on the ground that it was vexatious under section 14(1) of the Freedom of Information Act 2000 [FOIA]:

14. Vexatious or repeated requests.

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

The Library maintained its position on internal review. Mr Liu complained to the Information Commissioner under FOIA section 50, but the Commissioner decided that the Library had been correct to rely on section 14(1).

B. The appeal to the First-tier Tribunal

4. Mr Liu appealed against the Commissioner's decision to the First-tier Tribunal. The Commissioner applied for the appeal to be struck out, but the tribunal refused and proceeded to hear the case. After considering the papers, the tribunal dismissed the appeal. Its reasoning is at paragraphs 25 to 34 of its written reasons:

25. The background against which we must consider the Commissioner's decision is one where we accept that since 2015 there have been many, many requests made to a number of UK academic institutions about this particular PhD thesis by Tsai Ing-wen, when it became clear that she would become president of Taiwan. It seems clear from what we have read that there has been a concerted campaign to undermine Dr Tsai and that questioning of the award of a PhD could be seen as an effective way of doing this. Even though we accept the Commissioner's finding that the Appellant is not part of the concerted campaign, this is a subject area about which the Appellant must know there has been a high level of interest over the years.

26. We note that the Library advised the Appellant that, since 2020, the LSE and the University of London have been refusing requests relating to Dr Tsai's thesis on the basis that they were vexatious, and the Library also referred to a statement published by the ICO about its decision to apply section 14 FOIA to any requests received on the same subject where it was found that they were lacking 'valid purpose'.

27. We further note that, importantly, the FTT in the Hsu case found as follows:-

24. ... the University has confirmed publicly that a PhD degree was awarded to President Tsai. In its original response to the Request, the University stated, "The University of London confirms that Ms Ing-Wen Tsai was awarded a PhD by the University of London in 1984 and she was registered as an LSE student", and this statement was repeated in the

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internal review response. The internal review also repeats information from other FOIA requests that, “The University can confirm its records state that the examiners reviewed the thesis and examined the candidate orally on the subject of the thesis...Dr Tsai was recorded on the University’s 1984 pass list”. The University’s submissions for this appeal also confirm that it holds records of the viva and pass list, and can confirm award of the degree. These clear statements from the University satisfy the legitimate interests in confirming that President Tsai was awarded a PhD degree.

2. ... We accept that the explanation originally provided by the University that the thesis had been lost or mis-shelved may not be correct, as there is no catalogue or microform record of the original thesis. However, this does not mean that President Tsai was not awarded a PhD degree, or that there has been academic fraud. It simply means that the thesis was not filed correctly in the libraries in 1984. The University has provided clear statements confirming that President Tsai had an oral (viva) examination and was awarded a PhD degree.

28. It is clear from the Appellant’s appeal documents that his purpose is to establish that the thesis does not exist, and that somehow the Library’s records (which are based on a copy of the thesis provided by Dr Tsai) are falsified in some way. However, from the Hsu case we accept Dr Tsai did write a thesis, that she was tested on it in a viva and that the award of the PhD is recorded in the University records. We also accept that the most likely explanation for an inability to locate the thesis is a filing error in 1984 (at a time when there would not have been computerisation of PhD theses). For the purposes of this appeal, we have seen email correspondence from 2015 between University institutions in which it is confirmed that copies of the thesis were provided to examiners in 1984, but that (for reasons not now known) the thesis was not catalogued.

29. The Appellant’s focus has been turned towards the question as to how the Library could have made an official record about the existence of the thesis (in 2015) if none of the institutions from which it would take the record (LSE, IALS, Senate House Library) have an original copy of the thesis, and he seeks extensive information on this issue. (It appears that Dr Tsai provided a copy of the thesis in 2019).

30. Despite the Appellant’s submissions, it appears to us that the request has very little value. It is now established that the PhD was awarded to Dr Tsai in 1984 and records to confirm this are in existence. As the FTT in Hsu said the fact that an original copy of the thesis cannot be found, does not mean that it did not exist. There is nothing else to be said on the subject. We cannot see how it will be of value to be provided with detailed information as to the process by which the Library recorded the award of the degree on its systems in 2015.

31. Together with our acceptance that the Appellant is not part of a concerted campaign, we also accept that the Appellant has not used abusive or aggressive language in his request, and that there is no deliberate intention to cause annoyance. However, it seems to us that some of the other factors in the Commissioner’s guidance are made out.

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32. There is a clear burden on the Library to answer a request for 'ALL internal and external communications, correspondences, meeting minutes, emails, notes, recordings of telephone conversations, and all other records regarding cataloguing the referenced Ph.D. thesis in 2015', in circumstances especially where the Library has had to deal with many requests already about this thesis. In our view there is unreasonable persistence from the Appellant as he is aware that other institutions have confirmed the award of the PhD to Dr Tsai and yet he has continued to pursue the matter. This could also be portrayed as intransigence in the face of this information. It also seems to us that the Appellant has made unfounded allegations that the thesis does not exist, when the evidence is clear that there have been copies originally available which have been misplaced.

33. Taking an holistic view of this request, this request comes in the context of many other requests to the Library and other institutions (even if the Appellant is not part of a concerted campaign), and where the records show that there was a grant of a PhD to Dr Tsai for which she was properly examined. It is hard to avoid the conclusion that the Appellant has a misconceived belief that Dr Tsai has not been awarded a PhD despite clear evidence to the contrary.

34. Taking all these factors into account and bearing in mind the considerations set out in the Dransfield case, and in agreement with the reasons given by the Commissioner in the decision notice, it is our decision for the reasons set out above that the request is a vexatious request for the purposes of s14 FOIA.

C. The grounds of appeal to the Upper Tribunal

5. I gave Mr Liu permission to appeal to the Upper Tribunal following an oral hearing of his application. This is what I said on the first ground:

Mr Richardson's first ground referred to exhibits AA and BB. They are attached. Unless I have misunderstood them, they are from the British Library to Mr Richardson and admit that the records were inaccurate. They referred to actions relating to a copy of the thesis in 2015, when it was not available physically until 2019. As Mr Richardson pointed out, the request related to the records in 2015. These emails appear to be a belated admission that those records were incorrect. I give permission on this ground.

The emails were sent by the Library's Head of Corporate Information Management to Mr Liu's representative on 1 September 2023.

Exhibit AA was sent at 9:20 AM:

Many thanks for your correspondence of 29 August 2023 relating to the Library's internal review of a Freedom of Information request made in 2022.

After investigation I can confirm that we made an error in asserting that the thesis in question was uploaded to our Ethos system in 2015. A metadata record for the thesis in question was created in the Ethos system in 2015, but a copy of the thesis itself was not uploaded and attached to that record until 2019.

The British Library's position on all other matters set out in our Internal Review response of 12 July 2022 remains unchanged.

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Exhibit BB was sent at 1:53 PM:

I apologise for not being clear - the sentence in question in our Internal Review should have read 2019 and not 2015 for both dates.

6. This is what I said on the remaining grounds of appeal:

Mr Richardson's second ground was that the tribunal had not relied on the burden on the Library without quantifying it. He noted that the Library had not relied on the section 12 exemption. I give permission on this ground, although it is possible that the tribunal was referring to the burden in the general sense of having to undertake a search for which there was no good purpose.

Mr Richardson's third ground was that the purpose of the request related to the Library's records, not to the thesis itself. The subsequent discovery of the error in the records tends to show that there was some purpose in the request. I give permission on this ground also. The tribunal found (paragraph 28 of its written reasons) that Mr Liu's purpose was to show that the thesis did not exist. It identified the submission on which it relied in paragraph 7 of the refusal of permission to appeal. The meaning of that submission takes on a different meaning once it is understood that the documentation could not be correct if there was no physical copy of the thesis available in 2015.

Mr Richardson fourth ground was that the tribunal had shown bias. He did not allege the classic grounds for bias – race, class, religion or gender. Rather, he used this as a convenient heading to include: (a) assuming that Mr Liu knew what had been in other requests relating to the thesis; (b) misconstruing the request, which was not about whether the PhD had been properly awarded – a matter for the University of London, not the Library; and (c) finding persistence and intransigence without evidence. If this were an allegation of bias in its traditional sense, I would refuse permission on this ground. I prefer to read it as a label to bring together the individual points made that I have itemised above. On that basis, I give permission on this ground.

D. The submissions

7. The Information Commissioner (through Ms Jones) has responded to the appeal, arguing that there was no error of law on any of the grounds of appeal. Mr Liu has replied (through Mr Richardson), maintaining the grounds in detail.

E. Why I have allowed the appeal

8. I began by drafting a decision based around the four grounds of appeal. Doing so produced a disjointed explanation. I abandoned that approach and decided instead to take the grounds together and as a whole.

9. This case is related to the interest that has been generated in Dr Tsai's PhD degree. The interest is not surprising given the state of the records kept by the institutions involved and their inability to produce the original copy of the thesis.

10. The tribunal accepted that Mr Liu was not part of 'a concerted campaign to undermine Dr Tsai' (paragraphs 25 and 31). Despite that, the tribunal found that Mr

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Liu's 'purpose is to establish that the thesis does not exist'. I do not understand how that could be. Dr Tsai provided a copy of the thesis in 2019 (paragraph 29) and Mr Liu did not make his request until 2022. That request does not assume that the thesis did not or does not exist. It relates to the internal processes of the Library.

11. The tribunal mentioned the provision of the thesis, almost in passing, at the end of paragraph 29. It proceeded immediately to demonstrate that the request 'has very little value' (paragraph 30). It related this to the tribunal decisions relating to the award of the degree and the records to confirm this, before saying: 'the fact that an original copy of the thesis cannot be found, does not mean that it did not exist. There is nothing else to be said on the subject.'

12. So far, then, the tribunal's reasoning has assumed a purpose that is not supported by the nature of the request and dismissed the request as of no value on that basis.

13. If the request is taken as asking information about the Library's records and processes, it had a purpose, or at least a consequence, as shown in the admission in the emails I have quoted.

14. The tribunal went on to consider the breadth of the request and Mr Liu's persistence and intransigence given that other institutions have confirmed the award of the degree.

15. I take the breadth of the request first. The focus of this ground is on the 'burden' and the breadth of the request. I consider that this criticism was unrealistic. Most requesters do not know what information is held by the public authority. Most do not know where it is held. I read Mr Liu's request as covering all bases to ensure that the Library checked all possible locations. That was sensible in order to avoid the need for further requests and the risk of those requests being treated as vexatious.

16. Not only is the criticism unrealistic, it also confuses (a) the information sought, (b) its possible location, and (c) the effort needed to search for it. If the request required a manual search in each possible location, the tribunal's criticism would make sense. But it is surely possible nowadays for electronic searches to avoid the need for intensive manual searches. And if the time required was excessive, the Library was not without recourse. It could have relied on FOIA section 12:

12. Exemption where cost of compliance exceeds appropriate limit.

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

17. As to persistence and intransigence, this criticism makes the mistake I have already dealt with – assuming a purpose that made no sense.

18. What I have said so far is sufficient to deal with the first three grounds of appeal and to show that the First-tier Tribunal made an error of law in applying FOIA section 14. That alone justifies and requires a rehearing before the tribunal.

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19. I can deal with the fourth ground briefly. Mr Richardson accepts that it does not allege bias in the technical sense. In view of the conclusion I have already reached, I do not need to deal with this ground in order to dispose of the case. Nor is it necessary to deal with any part of it in order to give guidance for the rehearing.

**Authorised for issue
on 12 December 2024**

**Edward Jacobs
Upper Tribunal Judge**