Neutral Citation Number: [2026] UKUT 16 (AAC)
Appeal No. UA-2025-000165-GIA

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

DR JESÚS ANTONIO SILLER FARFÁN

Appellant

- v -

(1) THE INFORMATION COMMISSIONER
(2) THE GOVERNING BODY OF THE UNIVERSITY OF CENTRAL LANCASHIRE

Respondent

Before: **Upper Tribunal Judge Stout**
Hearing date: **27 November 2025**

Representation:
Appellant: Simon Ridding (counsel)
First Respondent: Eric Metcalfe (counsel)
Second Respondent: Claire Miller (Information Governance Manager & Data Protection Officer)

On appeal from:
Tribunal: First-Tier Tribunal (General Regulatory Chamber) (Information Rights)
Tribunal Case No: EA/2024/0069
Neutral Citation No.: [2024] UKFTT 00896 (GRC)
Tribunal Venue: By video
Decision Date: 18 October 2024

SUMMARY OF DECISION

FREEDOM OF INFORMATION – right of access (93.1)

This case concerned a request for information made to the second respondent university for information about a decision made by the University and Colleges Employers Association (UCEA), which information was in the university's possession by virtue of its Vice-Chancellor being on the board of UCEA. The First-tier Tribunal upheld the Information Commissioner's decision that the university had been entitled to withhold the information on the basis that it was not "held" by it within the meaning of section 1(1) and

3(2)(a) of the Freedom of Information Act 2000. The Upper Tribunal considers the approach that is to be taken to determining whether a public authority is not holding information to any extent on its own behalf so that it falls outside the Act by virtue of section 3(2)(a), and decides that separate consideration should be given to whether the information is "held" and on whose behalf it is held. The focus when considering the latter should be on the nature of the connection between the public authority and the information, not on whether the connection is 'sufficient' or 'rational' or whether the public authority has 'an interest' in the information. Where the public authority is acting as agent for a third party in relation to the information, the information will not normally fall within the scope of FOIA (*The Scottish Ministers v The Scottish Information Commissioner* [2023] CSIH 46 and *Ian Graham v The Scottish Information Commissioner* [2019] CSIH 57 doubted.) In this case, the First-tier Tribunal had in substance taken the correct approach in principle and had reached a conclusion on the facts of this case that was open to it.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is to dismiss the appeal. The decision of the First-tier Tribunal did not involve an error of law.

REASONS FOR DECISION

Introduction

1. The appellant appeals against the decision of the First-tier Tribunal of 18 October 2024 on an appeal under section 50 of the Freedom of Information Act 2000 (FOIA) against a Decision Notice of the Information Commissioner dated 26 January 2024. The First-tier Tribunal upheld the Commissioner's decision that the Governing Body of the University of Central Lancashire (the University) did not hold the information the appellant had requested for the purposes of section 3(2) of FOIA. Permission to appeal was refused by the First-tier Tribunal on 16 December 2024, but granted by me on 17 March 2025. The Information Commissioner and the University oppose the appeal.

2. The parties consented to this appeal being decided without a hearing and I was initially content to do so. However, during the course of deliberation, I formed the view that it was in the interests of justice to hold a hearing and I issued directions to the parties accordingly. I identified in my directions a number of specific legal issues on which I required further submissions from the parties, and each party provided written submissions in response to my directions. The appellant, who had hitherto been representing himself, at this point instructed counsel to represent him. At the hearing, I did not limit counsel in their oral submissions to the issues I had

identified, but invited them to address me orally on all aspects of the appeal. I am grateful to all counsel for their very helpful written and oral submissions, and to the appellant for the written submissions that he made when representing himself. I apologised at the hearing, and I apologise again, for the length of time that it has taken to resolve this appeal.

The appellant's request

3. The appellant's request for information was made to the University on 6 August 2023. He requested:

> "All the sent and received communications (whether internal, external, and regardless of the platform) of Professor Graham Baldwin that are related, however tangentially, to Queen's University Belfast [QUB]. Such search can be limited to exchanges that took place after the 1st of March 2023. The nature of this request includes, but it is not limited to: e-mail, physical correspondence, chat exchanges, messaging exchanges, etc"

4. On 9 August 2023, the University responded to the Appellant's request, stating that it did not hold information within the scope of his request. The Appellant then asked the University to conduct an internal review.

5. On 15 August 2023, the University notified the Appellant that it had completed its review and decided to uphold its original decision.

6. On 27 September 2023, the Appellant complained to the Commissioner concerning the University's handling of his request.

7. On 26 January 2024, the Commissioner issued Decision Notice IC-260483-T4L2 in which he concluded, in summary, that the University had carried out searches to determine whether or not it held any correspondence within the scope of the Appellant's request. Its searches had not returned any information held for the purposes of FOIA. To the extent, however, that it held any communications relating to QUB, these would be private communications received by the Professor in his role as a Director and Deputy Chair of the Board of University and Colleges Employers Association (UCEA) and therefore held on the UCEA's behalf. Such information would not be needed or used by the University, nor would the University be permitted to use such communications for its own purposes. The Commissioner was on that basis satisfied that the University did not hold any information within the scope of FOIA and was entitled to rely on section 3(2) to refuse the request.

8. The Appellant appealed to the First-tier Tribunal (FTT) against the Commissioner's Decision Notice.

The First-tier Tribunal's decision

9. The First-tier Tribunal's decision includes the following findings of background fact that seem to me to be material to the appeal:-

10. Professor Baldwin is the vice-chancellor of the University. The University is a subscribing member of UCEA ([60]). UCEA is an employers' association for subscribing universities and other higher education institutions ([2]). One of four (corporate) members of UCEA is Universities UK (UUK) ([4]).

11. UUK describes itself as the 'collective voice of universities' ([5]). The members of UUK are the vice-chancellors or principals of UK universities. Professor Baldwin, being vice-chancellor of the University is a member of UUK.

12. Each of the corporate members of UCEA is entitled to nominate one person to represent it at general meetings of UCEA ([6]) and each of the corporate UCEA members is also entitled to nominate a certain number of UCEA board members, who are also directors of UCEA ([7]). At present, the board consists of heads of institutions and chairs of governing bodies from 18 institutions. It is a voluntary role, but UCEA can and does pay expenses ([7]).

13. Professor Baldwin was at all relevant times Deputy Chair of the board of UCEA and Director of UCEA ([12]). It follows from the Tribunal's findings of fact that Professor Baldwin must have been nominated by UUK to his role with UCEA, although the Tribunal does not state so in terms, although it records the mechanisms for nomination and as set out above.

14. Professor Baldwin is permitted to, and does, use his University email account for correspondence in his UCEA role ([13]) and claims his expenses in connection with the role back from the University. The University in turn claims reimbursement of his expenses from UCEA.

15. In 2023 the UCEA board terminated the subscribing membership of QUB ([11]).

16. There was no dispute between the parties that all the communications falling within the scope of the appellant's request would be communications to and from Professor Baldwin in his capacity as deputy chair of the board of UCEA ([59]).

17. There was also no dispute between the parties that the University had the information in question on the University's computer systems. The issue for the Tribunal was whether the information was "held" by the University within the meaning of sections 1(1)(a) and 3(2)(a) of FOIA.

18. The First-tier Tribunal directed itself by reference to *BUAV v IC and University of Newcastle* [2011] UKUT 185 (AAC) and *Department of Health v Information Commissioner* [2017] 1 WLR 3330, and also the Court of Sessions decisions in *The Scottish Ministers v The Scottish Information Commissioner* [2023] CSIH 46 and *Ian Graham v The Scottish Information Commissioner* [2019] CSIH 57).

19. The First-tier Tribunal concluded that the information requested was held by the University solely on behalf of either UCEA or on behalf of Professor Baldwin

personally in his capacity as board member or director or deputy chair of UCEA. It is appropriate to set out the core of its reasons in full here as follows:-

> 57. Information must be held by the public authority solely on behalf of someone else in order to fall within section 3(2) FOIA.
>
> 58. We do not need to determine if UCEA is a public authority within FOIA. This request was made to the University, not to UCEA.
>
> 59. The information in question consists of correspondence sent or received by Professor Graham Baldwin relating to Queen's University Belfast (QUB) after the 1st of March 2023. It is common ground that the correspondence at which this request is aimed, and the only correspondence that Professor Baldwin would have entered into relating to QUB, would be correspondence in his capacity as deputy chair of the board of UCEA.
>
> 60. We accept that there is a relationship between the University and UCEA. The University is a 'subscribing university' of UCEA. It is, by its vice-chancellor, a member of UUK. We accept that the Vice-chancellor of the University is a member of the UUK for company law purposes and that UUK is a member of UCEA for company law purposes. In our view this underlying corporate structure does not assist in answering the question as to whether or not the requested information is held by the University solely on behalf of UCEA.
>
> 61. UCEA is an employers' association. It represents the interests of universities and higher education institutions. It negotiates collective pay agreements with unions which bind its subscribing universities and institutions. It acts, in part, on behalf of the University, and all subscribing universities, in the same way that a Trade Union acts, in part, on behalf of an individual employee.
>
> 62. UCEA is a non-profit company and has a board. The board provides organisational oversight, corporate governance, strategic direction and leadership of collective pay negotiations. It is an unpaid role. They are nominated by the Member (UUK, CUC etc.). Each Member gets to nominate a certain number of board members.
>
> 63. The board members are heads of subscribing institutions but not all the heads of subscribing institutions are on the board. For example, currently there are 18 board members, 8 of which were nominated by UUK. The board is intended to 'represent the diverse range of institutions'. Conversely the board is not intended to represent each one of those institutions.
>
> 64. The UCEA articles of association does allow for the involvement of individual institutions, but it is not through board membership. For example, every year the Board is required to invite all subscribing Universities and

other institutions of higher education to a meeting discuss matters relating to the UCEA.

65. For those reasons we find that Professor Baldwin was not sitting on the board of UCEA as a representative of, or on behalf of, the University any more than he was doing so on behalf of any other university. He was on the board in his capacity as a vice-chancellor of a university rather than as the vice-chancellor of the University. This is not altered by the fact that expenses are initially claimed by Professor Baldwin from the University then reclaimed by the University from UCEA.

66. His work as deputy chair and as a board member was not part of the business of the University, even though as a subscribing member it had an interest in the success of UCEA and benefitted from its actions and its services. The fact that a board member might report back to their institution on matters that took place at UCEA meetings does not alter that.

67. In the light of that factual context, it is clear to us that the correspondence covered by the request was sent and received by Professor Baldwin in his capacity as the deputy chair and board member of UCEA. Professor Baldwin was permitted by the University to use his email account for those separate purposes. That is the only reason why the University has the relevant information. It was not sent and received in Professor Baldwin's capacity as the vice-chancellor of the University. There is insufficient connection between the University and that information.

68. For those reasons, we accept Mr. Davidson's submissions that the information was held by the University solely on behalf of either UCEA or on behalf of Professor Baldwin in his capacity as board member or director or deputy chair of UCEA.

Legal framework

(i) The role of the First-tier and Upper Tribunals in FOIA cases

20. By section 50 of FOIA any person may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I of that Act.

21. The First-tier Tribunal's jurisdiction under sections 57 and 58 of FOIA on appeals against Decision Notices issued by the Commissioner under section 50 is to consider whether the Decision Notice is not in accordance with the law or, to the extent that the Decision Notice involves an exercise of discretion, whether the Commissioner ought to have exercised his discretion differently. The jurisdiction is one in which the Tribunal 'stands in the shoes' of the Information Commissioner and conducts a full merits review, albeit by reference to the position at the time that

the request for information was refused by the public authority: *Maurizi v IC and CPS* [2019] UKUT 262 (AAC) at [168] and [184].

22. The Upper Tribunal's jurisdiction under section 11 of the Tribunals, Courts and Enforcement Act 2007 (TCEA 2007), however, is limited to considering whether there are any points of law arising from a decision made by the First-tier Tribunal. An appeal will only succeed where there is a material error of law in the First-tier Tribunal's decision. A material error of law is an error of legal principle that might have affected the result. An error of fact is not an error of law unless the First-tier Tribunal's conclusion on the facts is perverse, i.e. one that no reasonable Tribunal could have reached if it had properly applied the law to the evidence that was before it at the hearing. An appeal to the Upper Tribunal is not an opportunity to re-argue the case on its merits. (See generally *R (Iran) v SSHD* [2005] EWCA Civ 982, [2005] Imm AR 535 at [9]-[11].)

(ii) The meaning of 'holds'/'held' in FOIA

The legislation

23. Section 1 of FOIA provides, so far as relevant:

> (1) Any person making a request for information to a public authority is entitled—
> (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
> (b) if that is the case, to have that information communicated to him.
>
> (4)The information—
> (a) in respect of which the applicant is to be informed under subsection (1)(a), or
> (b) which is to be communicated under subsection (1)(b),
> is the information in question held at the time when the request is received …

24. Section 3(2) of FOIA makes provision as to when information will be 'held' for the purposes of FOIA:-

> For the purposes of this act, information is held by a public authority if:-
> (a) it is held by the authority, otherwise than on behalf of another person, or
> (b) it is held by another person on behalf of the authority.

25. Section 3(2) is thus a deeming provision. Section 1(1)(a) brings within the scope of FOIA all information 'held' by a public authority. However, the effect of section 3(2)(a) is to exclude certain information from the scope of the Act which would otherwise fall within it as a result of being 'held' by the public authority. In contrast, the effect of section 3(2)(b) is to bring within the scope of the Act information that would otherwise have fallen outside it because it is not 'held' by the public authority.

Section 3(2) does not, however, tell us what 'held' actually means. I return to this question when dealing with Ground (2).

26. The present case is concerned with section 3(2)(a), which includes within the scope of the Act information that is held by a public authority only if it is held "otherwise than on behalf of another person". "Person", by virtue of the Interpretation Act 1978 (section 5 and Schedule 1) "includes a body of persons corporate or unincorporate" unless the contrary intention appears.

The case law

27. I begin with Judge Wikeley's decision in *BUAV v IC & Newcastle University* [2011] UKUT 185 (AAC) (*BUAV*). In that case at [21]-[22] he held the following paragraph from the First-tier Tribunal's judgment to be an accurate statement of the effect of section 3(2) as follows (emphasis added):-

> The effect of this subsection is to confirm the inclusion of information within the scope of FOIA s1 which might otherwise have been arguably outside it. The effect of paragraph (a) is that **information held by the authority on behalf of another is outside s.1 only if it is held solely on behalf of the other: if the information is held to any extent on behalf of the authority itself, the authority 'holds' it within the meaning of the Act**. The effect of paragraph (b) is that the authority 'holds' information in the relevant sense even when physically someone else holds it on the authority's behalf.

28. Judge Wikeley went on at [23] to quote the following passage from [47] of the judgment of the First-tier Tribunal:

> [47] 'Hold' is an ordinary English word. In our judgment it is not used in some technical sense in the Act. We do not consider that it is appropriate to define its meaning by reference to concepts such as legal possession or bailment, or by using phrases taken from court rules concerning the obligation to give disclosure of documents in litigation. Sophisticated legal analysis of its meaning is not required or appropriate. However, it is necessary to observe that 'holding' is not a purely physical concept, and it has to be understood with the purpose of the Act in mind. Section 3(2)(b) illustrates this: an authority cannot evade the requirements of the Act by having its information held on its behalf by some other person who is not a public authority. Conversely, we consider that s.1 would not apply merely because information is contained in a document that happens to be physically on the authority's premises: there must be an appropriate connection between the information and the authority, so that it can be properly said that the information is held by the authority. For example, an employee of the authority may have his own personal information on a document in his pocket while at work, or in the drawer of his office desk: that does not mean that the information is held by the authority. A Government Minister might bring some constituency papers into his

> departmental office: that does not mean that his department holds the information contained in his constituency papers.

29. At [24] Judge Wikeley noted that the example given in the final sentence of that quoted paragraph was taken from the official Explanatory Notes to FOIA (at paragraph 31).

30. At [27] Judge Wikeley stated that he considered what the Tribunal had said in its [47] was an accurate statement of the law. However, he went on at [28]-[29] to express a note of caution as to what the Tribunal said about 'holding' not being a purely physical concept:

> 28. The test that FOIA uses is whether the public authority "holds" the requested information. The choice of statutory language must be significant. The test is not whether the public authority "controls" or "possesses" or "owns" the information in question; simply whether it "holds" it (as was observed by the information tribunal in *Quinn v Information Commissioner* [(EA/2005/0010) at [50]). "Hold", as the present tribunal also noted, is an ordinary English word and is not used in some technical sense in the Act. That construction is also supported by one of the leading texts, Information Rights: Law and Practice by Philip Coppel QC (3rd edn, Hart Publishing, 2010), which observes that FOIA "has avoided the technicalities associated with the law of disclosure, which has conventionally drawn a distinction between a document in the power, custody or possession of a person" (p.339, para. 9-009). The tribunal's comments are consistent with the approach taken by Lord Reid in *Brutus v Cozens* [1973] AC 854 (at 861), namely that "The meaning of an ordinary word of the English language is not a question of law. The proper construction of a statute is a question of law."
>
> 29. More recently Lord Hoffmann, in explaining the significance of those dicta from *Brutus v Cozens*, noted that "many words or phrases are linguistically irreducible in the sense that any attempt to elucidate a sentence by replacing them with synonyms will change rather than explain its meaning" (*Moyna v. Secretary of State for Work and Pensions* [2003] UKHL 44 at paragraph 23). The tribunal in the present case was plainly alive to that very real danger. It (quite properly) did not seek to re-define or replace the word "hold" in any way. True, the tribunal ruled that "'holding' is not a purely physical concept", but that was necessary on a purposive construction of the legislation, bearing in mind the clear terms of section 3(2) of FOIA. Furthermore I do not regard the tribunal's reference to the need for "an appropriate connection between the information and the authority" as a misguided attempt to replace the statutory language with its own "rather nebulous" test (as Mr Pitt-Payne put it). On the contrary, the tribunal was simply pointing to the need for the word "hold" to be understood as conveying something more than the simple underlying physical concept, given the intent behind section 3(2).

31. It is relevant to the present case to note the following factual point from the *BUAV* case. The information requested in *BUAV* was information contained in project licences issued under the Animal (Scientific Procedures) Act (ASPA) 1986 in respect of experiments on non-human primates carried out at the University. The project licences were issued to named academics at the University. One of the threads of the Tribunal's reasoning (quoted at [26] of Judge Wikeley's decision) was that:

> "Dr Hogan was the certificate holder not in his personal capacity but precisely because as Registrar he represented the governing body of the University. In that capacity he held the information in the project licences."

32. Judge Wikeley's approach was approved by the Court of Appeal in *Department of Health v The Information Commissioner & Anor* (*DoH*). That case concerned a request for the Ministerial diary of Andrew Lansley MP. The Information Commissioner held that the diary fell within the scope of the Act. The First-tier Tribunal agreed and dismissed the department's appeal, as did Charles J in the Upper Tribunal ([2015] UKUT 159 (AAC)) and so did the Court of Appeal ([2017] EWCA Civ 374, [2017] AACR 30).

33. The Court of Appeal (Sir Terence Etherton, with whom Black and Davis LJJ agreed) at [54]-[57] held:

> 54. I agree with the Department that the question whether it holds the information must be judged in relation to each entry, or piece of information, in the diary. Furthermore, it was common ground before us that, in agreement with Upper Tribunal Judge Wikeley's observations in *University of Newcastle upon Tyne v IC and BUAV* [2011] UKUT 185 (AAC), there must be an appropriate connection between the information and the Department so that it can properly be said that the information is held by the Department.
>
> 55. It seems obvious that, subject to any absolute or qualified exemptions in FOIA, the information in the diary was "held" by the Department for the purposes of the FOIA during such time as Mr Lansley was a Minister in the Department, whether or not the diarised events had already occurred. The information related to one or more of the matters identified in section 35(1). It was set up and maintained by the Department and at its cost. At the very least the diary was, as Mr Eadie said in his oral submissions, an efficiency tool to enable the Department, particularly no doubt the Minister's private office, and the Minister, to know what his upcoming appointments would be, with whom and where, and to facilitate decisions about his availability for other appointments, and also to be a record of what he had done, who he had seen and where, should those matters become relevant to Mr Lansley's Ministerial functions and his private office after the diarised events had occurred.
>
> 56. Plainly, therefore, while Mr Lansley was a Minister in the Department, for the purposes of section 3 of FOIA the entries in the diary were held by

> the Department for itself even if they were also held (in the case of personal or constituency matters) for Mr Lansley as well.
>
> 57. I cannot see that the termination of Mr Lansley's Ministerial position made any difference to that position. I do not see that the entries suddenly became held for Mr Lansley alone for the purposes of section 3(2)(a) of FOIA. In particular, it seems to me clear that it remained relevant or potentially relevant to the Department to know, as a matter of historical record, where Mr Lansley had been and with whom on particular occasions, should there be a political, journalistic or historical interest raised with the Department in relation to those matters.

34. The Court of Appeal in that case upheld the decision of the Upper Tribunal (and the First-tier Tribunal). The Information Commissioner in this case draws attention to Charles J's observations in the Upper Tribunal as to the approach to judging whether there was a "sufficient connection" between the information requested and the public authority that it can be said to hold the information at least partly for itself. Charles J held:

> 95. Unsurprisingly both parties adopted the "ordinary English word" approach set out by Judge Wikeley in paragraph 23 and following of the passages I have cited from his decision in the Newcastle University case. The main difference between them was that the Department argued that there was not a "sufficient connection" between the entries relating to non-Ministerial matters to found the conclusion that they were held by the Department. The focus of this argument was that contents of those entries had nothing or insufficient to do with the activities of the Department to found the sufficient connection.
>
> 96. In my view, the application of this approach indicates that:
> i) before an authority can be said to "hold" information as a matter of ordinary usage of language it will have been given it, or have obtained it, or have created it, and
> ii) the reasons why it was given it, or obtained it or created it inform on whose behalf it holds the information and thus whether it holds the information solely for another person, or solely or partly for itself.
>
> 97. It follows that the impact of the reasons why the authority has the relevant information:
> i) explains the points made in Judge Wikeley's citation in the Newcastle University case, and the tribunal in McBride v Information Commissioner and Ministry of Justice (EA/2007/0105) at paragraph 31, that possession is not enough, and can provide the basis for
> ii) a sufficient connection between the information and the authority to found the conclusion that it holds that information.

35. I note that Charles J in this passage repeatedly uses the term "sufficient connection", but that term was not used by Judge Wikeley in *BUAV* or by the Court of Appeal in the *DoH* case. The term "sufficient connection" seems to me to have

entered the lexicon in Charles J's judgment as a result of its use by the judges of the Supreme Court in *Sugar v BBC and Another* [2012] UKSC 4, [2012] 1 WLR 439 (*Sugar*), which Charles J discusses at [98]-[104]. *Sugar* was concerned with the meaning of the words in Schedule 1 of Part VI that designates FOIA as applying to the BBC only "in respect of information held for purposes other than those of journalism, art or literature". The issue the Supreme Court had to consider in that case was whether this meant that information held by the BBC was subject to FOIA if it was held by the BBC "solely" for purposes other than journalism or merely "predominantly" for purposes other than journalism. As Lord Walker put it at [68], the cases required the Supreme Court "to focus closely on the language and legislative purpose" of FOIA. Giving the leading judgment for the majority, he acknowledged at [76]-[77] (referring to the House of Lords' decision in *Common Services Agency v Scottish Information Commissioner* [2008] 1 WLR 1550) that in general the purpose of FOIA is the release of information so that it should in general be construed in as liberal a manner as possible. However, at [77]-[78] he observed that the Act also contains within it a number of exemptions and qualifications that are designed to protect equally significant interests. In that case, the majority of the Supreme Court held that the drafting of the Act indicated that the public interest in journalistic freedoms was to be given most weight in answering the question of interpretation that was before the court in that case, so that the answer to the question was that information held by the BBC is only subject to FOIA if it is held "solely" for purposes other than journalism. However, the majority recognised that there would still be a judgment call to be made in individual cases, especially given that the purposes for which information is held may change over time, and it was in that context that their Lordships used the language of 'sufficient connection'. As Lord Brown summarised it at [105]-[106] (emphasis added):

> 105. In short, like Lord Walker JSC, I find that the natural construction of the Act, and Parliament's evident concern to ensure that the interests of free expression trump without more those of freedom of information, supports the BBC's case on this issue.
>
> 106. As for the point at which information will cease to be held to any significant degree for the purposes of journalism and become held instead, say, solely for archival purposes, that necessarily will depend on the facts of any particular case and involve a question of judgment. I too agree with Lord Walker JSC that the central question to be asked in such a context will be, not which purpose is predominant, but rather whether there remains any **sufficiently direct link** between the BBC's continuing holding of the information and the achievement of its journalistic purposes.

36. I return to the significance of Charles J's 'borrowing' of the language of 'sufficiency' when dealing with the parties' arguments on ground (2).

37. The Appellant has also referred me to two decisions of the Inner House of the Court of Session. The cases concern the provisions of the Freedom of Information (Scotland) Act 2002 (FOI(S)A), but that Act is materially identical to FOIA so far as the meaning of "held" is concerned. However, it is important to note that although the Court of Session Inner House was acting as first-tier tribunal in those cases,

unlike the English First-tier Tribunal whose role I have described above, the Court of Session does not 'stand in the shoes' of the Commissioner, but is limited under section 56 of FOI(S)A to considering whether the Commissioner has erred "on a point of law".

38. In *Ian Graham v The Scottish Information Commissioner* [2019] CSIH 57 (*Graham*), the Second Division of the Inner House considered an appeal relating to a request to Aberdeenshire Council for certain information relating to the procurement of contracts for the provision of electoral services for the returning officers in the council's areas. The council maintained that it was holding the information on behalf of the returning officer and refused most of the request, albeit answering parts of it with the consent of the returning officer. The Commissioner accepted the council's argument that the returning officer was an independent and distinct legal entity and that the council was not holding the information on its own behalf. The Court of Session disagreed. At [15] it affirmed that the words used in the Act should "be given their ordinary and natural meaning" and that, given the purpose of the Act in promoting open, transparent and accountable government, "there should be no scope for the introduction of technicalities, unnecessary legal concepts calculated to over-complicate matters and, by so doing, to restrict the disclosure of relevant information". At [15]-[17] the Court of Session explained why it concluded that the procurement process was being conducted in part for the council's purposes. At [18] the Court of Session explained why it did not consider that the information requested fell outside the Act by virtue of the equivalent of section 3(2)(a) of FOIA:

> [18] …For [section 3(2)(a))] to have any impact in this case it would have to be shown not only that the Council held the relevant information about these contracts on behalf of the returning officer, but also that it had no (or no material) interest of its own: see the *Newcastle University* case, at paras 21-22, with which we agree. So even if it could be shown that the returning officer had a direct interest in this information – for example in a case where the Council was acting as agent for the returning officer – that would not alter the position. The Council would still have its own interest, since it acquired rights and undertook obligations of its own under the call-off contracts.
>
> [19] It appears from the Information Commissioner's Decision Letter that he was influenced by the fact that the returning officer was independent of the Council; and that the purpose of the procurement process carried out by the Council was to procure a number of suppliers to provide electoral services to the returning officer. His thinking seems to have been that the suppliers were, by this process, brought into some direct relationship with the independent returning officer; and that once this had happened the Council had no further role to play in the process. This is not correct, for the reasons set out above. But even if that had been a correct analysis of the transactions, it would not deprive the Council of all interest in holding the relevant information. An agent who brings about a contract for his principal still holds an interest in information about the process in which he has been involved – for example, to justify internally the time spent on the contract or payments made in relation to it, to justify his conduct in selecting

the particular supplier, or even simply for his own record keeping or accounting purposes.

39. *The Scottish Ministers v The Scottish Information Commissioner* [2023] CSIH 46 (*Scottish Ministers*) concerned a request for information on Mr James Hamilton's report in relation to whether the former First Minister, the Right Honourable Nicola Sturgeon MSP, had breached the Scottish Ministerial Code. The information was stored in a restricted access area of the Scottish Government's document management systems used by Mr Hamilton, an Independent Adviser on the Scottish Ministerial Code. The Information Commissioner decided the information was held by the Scottish Ministers and the Court of Session (First Division, Inner House) upheld that decision. At [39], the Court noted *"Whether information is or is not held by a public authority is fundamentally a question of fact"*, but (at [40]) that *"mere physical possession … does not amount to holding the information; there has to be an appropriate connection …"*. In that case, the Court was satisfied that the Commissioner had not erred in law. In reaching that conclusion, the Court accepted that Mr Hamilton was an independent adviser, but identified that he was acting for the Scottish Ministers ([43]). The Court's further analysis is also, it seems to me, instructive as regards this appeal. The Court continued:

> [44] The circumstances of the present case are very different from the examples figured in Coppel, ibid (para 20-009) of circumstances where there would be no appropriate connection between the information and the public authority: mere deposit of information with an authority in the absence of any request for it or use of it by the authority; the lack of any right of control, amendment or deletion of the information by the authority; accidental leaving of the information with the authority; or information which simply passes through the hands of the authority. Here Mr Hamilton was fulfilling a remit set for him by the Scottish Ministers with the aim of enabling them to decide whether there had been a breach of the Scottish Ministerial Code.
>
> [45] It is also significant in considering whether an appropriate connection exists to recall that the information was held on the Scottish Government's IT systems. In this connection it is notable that in their written submissions the Ministers accept that they (or their officials) could gain access to the information. …
>
> [47] It is thus clear that the basis of the Ministers' view that they did not hold the information depends fundamentally on the fact that they imposed internal restrictions on who could gain access to the information. This stance is circular and unconvincing. The very fact that the Scottish Ministers had the requisite control over the information so as to enable them to put in place internal arrangements regulating access to it infers that they held the information; otherwise how could they have been entitled to impose those restrictions.
>
> [48] The Ministers' argument comes to this. They are entitled to rely on access restrictions which they unilaterally created and which they could

> unilaterally retract. Such an approach would in effect permit them to construct a technical barrier between them and the information with a view to putting the information beyond the reach of the freedom of information regime. …
>
> [49] It is notable also that there was nothing in Mr Hamilton's remit which sought to suggest that the Ministers were only entitled to receive his report and not the information on which it was based and which had been gathered by Mr Hamilton in the course of his investigation. …
>
> [50] The Commissioner was correct to attach importance to the fact that the investigation report was to be submitted to the Deputy First Minister and that the decisions on which parts of the report to redact were taken by the Scottish Government, on whose website the redacted report was published. …
>
> [51] The Commissioner rightly observed that compliance with the Scottish Ministerial Code was a matter in which the Scottish Ministers collectively had an interest. Ministers were bound by the Code as regards the duties it imposed on them.

40. Mr Metcalfe for the Information Commissioner has also referred me to three decisions of the English First-tier Tribunal as being illustrative of the proper approach to be taken to section 3(2)(a). In *McBride v Information Commissioner and Ministry of Justice* (EA/2007/0105, 27 May 2008) (*McBride*) the Tribunal at [27] observed:

> 27. Many of the arguments put forward by the parties have focused on the particular status of the Privy Council, the Privy Council Office, and the Visitor. In our view, the issue before us is not one that turns on their status. It is also not an issue that turns on who owns the information, nor on whether the PCO has exclusive rights to it, nor indeed on whether there is any statutory or other legal basis for the PCO to hold the information. Rather, the question of whether a public authority holds information on behalf of another is simply a question of fact, to be determined on the evidence.

41. In that case, the Tribunal concluded that information held by the Privy Council Office (PCO) for the purpose of assisting the determination of disputes by University Visitors was held for its own purposes, and not (solely) on behalf of the Visitors, because the PCO "performed all the administrative and management functions in relation to the office of Visitor" ([28]) and "petitioners were told to address their petitions to the PCO" ([29]). PCO staff undertook the work alongside their other work and there was "no confidentiality agreement, service agreement, nor any cost-recharging arrangement between the PCO and the University Visitor" ([30]). The Tribunal concluded that the PCO therefore held the information on its own behalf, since it was in the position of "managing and controlling the information" in the Visitor's files and "could edit or delete the information, and it could decide whom to send it to or whom to withhold it from" [31].

42. In *Digby-Cameron v Information Commissioner* (EA/2008/0010, 16 October 2008) (*Digby-Cameron*), in contrast, the FTT held that Hertfordshire County Council was entitled to refuse the appellant's request for a transcript of a Coroner's hearing, notwithstanding that the Council was responsible for the administration of the Coroner's service, since – under the terms of the Coroner's Rules – "'ownership' of and control over this information lay both in fact and law with the Coroner. That this should be the case was consistent with the fact that the Coroner is an independent judicial office holder, whose decisions are made independently of the Council" ([17]). Consequently, the Tribunal was satisfied that the Council held the information relating to hearings solely on behalf of the Coroner ([19]).

43. Another First-tier Tribunal decision involving the interface between administrative and judicial functions was *Kanter-Webber v Information Commissioner and anor* [2022] UKFTT 481 (GRC) (*Kanter-Webber*), in which the First-tier Tribunal concluded that information held by the Ministry of Justice relating to the Judicial College was not held for the Ministry's own purposes, the starting point being that, given the separation of powers, "there would have been no intention for the Ministry of Justice to 'hold' information provided for the judiciary's use for the purposes of FOIA" [33] and that civil servants' access to the judicial intranet was "specifically controlled by the Press and Communications Team, which is answerable only to judicial office holders, and is granted for limited purposes and limited periods of time" [34]. To the extent that the information was 'held' at all, the First-tier Tribunal considered, "the extent to which Ministry of Justice staff can access the judicial intranet, and the permission they need to do so, is controlled through a chain of command presided over by senior judiciary" [36]. Significantly, in seeking to distinguish the case from *McBride*, and explaining how its decision was consonant with the policy underlying FOIA, the Tribunal at [33] noted: "the exclusion of judicial information from FOIA was a conscious legislative choice by Parliament and our Decision in this appeal seeks to give effect to that choice".

The grounds of appeal

44. The appellant's notice of appeal was narrative in style. In granting permission, I identified three specific grounds that it seemed to me properly captured his arguments and the parties have been content to make their submissions by reference to these grounds:-

> Ground (1) – The First-tier Tribunal erred in law in approaching the case on the basis that the information would not be 'held' by the University for the purposes of FOIA if it was held to any extent on behalf of another person.
>
> Ground (2) – The First-tier Tribunal erred in law in applying a "sufficient connection" test rather than "a" rational connection test.
>
> Ground (3) – The First-tier Tribunal failed to take into account the nature of the legal relationships between the persons/entities in this case and/or

perversely concluded that the information was not held by the University given the nature of the relationship between the University itself, UUK and UCEA and between Professor Baldwin, the University, UUK and UCEA.

Analysis and conclusions

Ground (1) – The First-tier Tribunal erred in law in approaching the case on the basis that the information would not be 'held' by the University for the purposes of FOIA if it was held to any extent on behalf of another person.

45. The appellant's argument in relation to ground (1) focuses on what the Tribunal said at [57] of its decision. At paragraph 57 of its decision, the Tribunal stated that "information must be held by the public authority solely on behalf of someone else in order to fall within section 3(2) FOIA". On its face, that reverses the statutory test because the effect of section 3(2)(a) is the opposite: information held by a public authority falls within section 3(2) of FOIA unless it is held solely on behalf of someone else.

46. The appellant reads the Tribunal's decision as following from this erroneous statement of the law. However, the respondents submit that if the decision is read as a whole (as it must be) it is clear that the Tribunal was applying the proper approach.

47. I agree with the respondents on this issue. Read as a whole, it is apparent that the Tribunal had directed itself to answer the question as to whether the information was held solely on behalf of UCEA or Professor Baldwin because it understood that it was only if the answer to that question was 'yes' that the information would fall outside FOIA. It set that question out explicitly at [60] and answered it in the affirmative at [67]. Ground (1) does not therefore succeed.

48. I add that I readily understand why the Tribunal expressed itself as it did at [57]. That is because, as noted above, section 3(2)(a) is a deeming provision that operates like an exception or exclusion. Section 1(1)(a) brings within the scope of FOIA all information 'held' by a public authority, but the effect of section 3(2)(a) is to exclude certain information from the scope of the Act which would otherwise fall within it as being 'held' by the public authority.

Ground (2) – The First-tier Tribunal erred in law in applying a "sufficient connection" test rather than "a" rational connection test.

49. This ground is shortly stated, but contains a lot within it. It was the reason why I found it necessary to direct an oral hearing of this appeal. Answering it has required the careful review of the case law set out above, and detailed consideration of how section 1(1) and section 3(2)(a) work, including the meaning of the word 'held' itself which, as I noted above, is not defined in the Act.

The parties' submissions

50. The appellant (both in the submissions he made when representing himself, and those made by Mr Ridding on his behalf) argues that, on the ordinary meaning of 'held', information on a public authority's computer systems (whether on servers or in cloud storage) will normally be 'held' by it, even if it is leasing server or cloud space to a third party because the public authority will normally have access to the information and at least a degree of control over it. The appellant submits that the legal question the First-tier Tribunal should have asked itself was whether there was an "appropriate connection" between the University and the information requested. He suggests that an "appropriate connection" just means "a" connection or a "rational connection". He argues that the Tribunal has set the bar too high by looking for a "sufficient connection" and that this has affected the substance of the decision. He equates having an "appropriate connection" with having "an interest" in the information as the Court of Session put it in the *Scottish Ministers* case. He submits that a public authority will have an interest in the information if there is something about the information that touches upon, whether to its benefit or detriment, the aims, goals, and stated purpose of the public authority. He argues that the Tribunal had identified a number of respects in which there was an appropriate connection between the information and the University, in particular because the University "came to hold the information because it is a member and beneficiary of UCEA and because its Vice-Chancellor (so not Graham Baldwin as an individual or 'average' employee) was director and deputy chair of this organisation". If Professor Baldwin had ceased to be Vice-Chancellor of the University, he would have lost his position with UCEA too. Further, as UCEA's purpose was to operate in the collective interest of universities, the University properly has an interest in, and an appropriate connection with, the information.

51. Mr Metcalfe for the Information Commissioner submits that the ordinary meaning of 'held' is a physical one, but, as Judge Wikeley held in *BUAV*, the meaning in the context of FOIA is more than purely physical; an 'appropriate connection' test must be applied to give 'hold' a more than physical concept, given the intent behind section 3(2). Although some of the information requested may have been 'held' by the University in the ordinary physical sense, which may include 'holding' of electronic data on servers and other devices, some of it may have been on cloud servers operated by external providers as mentioned in the University's email policy. On a purposive construction, information will only be 'held' for the purposes of FOIA if there is an "appropriate connection" between the information and the public authority. It is important to give real meaning to the statutory words 'on behalf of'. The mere fact that a public authority holds information on its computer system, which it may have an interest in securing or controlling, does not mean that it is holding the information on its own behalf. Although "appropriate connection" is the correct test, *per* the Court of Appeal in *Department of Health*, there is no substantive difference between the notions of "appropriate connection", "sufficient" or "rational" connection and no reason to think that using different words might have led to a materially different outcome in this case. Whether the University is holding the information to any extent on its own behalf remains a question of fact. Here, the Tribunal found as a fact at [67] that the "only reason" the University had the relevant information was because "Professor Baldwin was permitted by the University to use his email account for those separate [UCEA] purposes", that the correspondence "was sent and received by Professor Baldwin in his capacity as the deputy chair

and board member of UCEA" and "not sent and received in Professor Baldwin's capacity as the vice-chancellor of the University". Nor was Professor Baldwin acting as the University's agent in his dealings with UCEA. The Commissioner submits that it is thus clear that the Tribunal was applying an appropriately stringent test and asking itself the correct question.

52. Mr Davidson for the University agrees in large part with the Information Commissioner's submissions. He adds that 'hold' is an ordinary English word, but there are 86 listed meanings of the word 'hold' in the Oxford English Dictionary, only 16 of which are labelled as obsolete. The word takes its meaning from the statutory context. It is important not to seek to replace the word with other terms of art such as 'control', 'possess' or 'own' (cf *BUAV*). In the Act, 'hold' means something more than a purely physical concept and requires an "appropriate connection"; an overly technical approach is to be avoided, but it may be necessary to give the bare word 'hold' a particular meaning (even without considering the rest of section 3(2)) in order to further the purposes of the freedom of information regime: as to which see *Department for Business and Trade v The Information Commissioner* [2025] UKSC 27, [2025] 1 WLR 3456 at [52] (*DBT*). 'On behalf of' must mean the same thing in both sections 3(2)(a) and (b); if information is held to any extent on behalf of a public authority, then it is covered by the Act. However, the concept of whether information is held 'on behalf of' a public authority cannot be circular or self-defeating so that information held by a public authority truly on behalf of another person is regarded as being held on the public authority's behalf simply because the mere fact of holding the information gives it an interest in it. The *Graham* case potentially falls into that trap; an agent is by definition acting on behalf of a principal; they are not holding information on own behalf just because they have an interest in fulfilling their role as agent. Likewise, *Scottish Ministers* is wrong to use the terminology of "an interest". "An interest" is not enough.

My decision

53. The statute itself says nothing about 'connection' or 'sufficiency' or 'appropriateness' or 'interest' or, indeed, about the purposes for which information is held. The statutory question in section 3(2)(a) is 'simply' the bi-partite one of whether, at the time of the request: (i) the University is "holding" the information; and, if so, (ii) it is doing so "otherwise than on behalf of another person". However, as noted, many of the authorities have found it necessary to gloss the statutory wording. They have tended to link the glossing words to the first of part of the statutory question (i.e. whether the information is 'held'), rather than to the concept of "on behalf of" (see, in particular, the passages from *BUAV* and *DoH* in the Court of Appeal set out above).

54. While there is nothing wrong with that, it seems to be helpful to keep the two parts of the statutory question in mind, and to address them separately focusing on the actual statutory wording, for two reasons: first, because it risks the analysis of whether information is 'held' by a public authority for the purposes of the first part of the statutory question becoming too technical; secondly, because it risks distorting the intent of the section by failing to focus on the meaning of "on behalf of" in this statutory context.

55. As to the meaning of "holds", as the authorities have emphasised, "holds" is an ordinary word that is readily understood both in general and in the context of FOIA. It will normally encompass all information physically in the possession of the public authority, both in electronic and hard copy form, as well as electronic data that is held or processed on devices, servers or cloud facilities belonging to (or leased to) the public authority, even if it may not always be correct to describe that electronic information as having any physical form. There may be room in some cases for dispute about whether the information is being 'held' by the public authority at all, such as, perhaps, in cases such as those mentioned at [44] of the *Scottish Ministers* case where there is an element of accident in the information being on the public authority's systems or premises: see above paragraph [39]. In those cases, it may be helpful to consider the nature of the connection between the public authority and the information in order to decide whether the information is 'held' within the ordinary meaning of that word in the context of FOIA, but in most cases there will be no doubt.

56. The present case is such a case; there is no dispute between the parties that the University was holding the information requested within the ordinary meaning of that word in the FOIA context, and the Tribunal appears to have proceeded on that basis (see, in particular, the way it phrased [68]), although it did not in its decision separately address the question of whether the University was 'holding' the information from the question of whether the University was holding the information 'solely on behalf of a third party' for the purposes of section 3(2)(a). That is not in itself an error of law, because answering the second question was all that was needed to determine the case before it. However, I was initially troubled that the failure to separate out the two questions had led to the risks I have identified of failing to focus on the statutory question of on whose behalf the information was being held at the time of the request, rather than on the more amorphous question of the nature of the connection between the University and the information, or merely on the question of on whose behalf Professor Baldwin was acting when he originally sent or received the information in question, rather than on the situation at the time of the request.

57. As to the second part of the statutory question, the parties are agreed that "otherwise than on behalf of another person", means, as Judge Wikeley held in *BUAV*, that *"information held by the authority on behalf of another is outside section 1 only if it is held **solely** on behalf of the other: if the information is held **to any extent** on behalf of the authority itself, the authority 'holds' it within the meaning of the Act"* (emphasis added). Judge Wikeley's approach was not doubted and (reflecting agreement between the parties in this respect) was followed by Charles J and the Court of Appeal in *DoH*. I consider it remains a correct statement of the law. There is no 'dominant purpose' test here, unlike with the journalistic purposes provision that was the subject of the *Sugar* case.

58. However, that still leaves the question of what FOIA means by the words *"on behalf of"*. These words themselves have received little attention in the case law, but they are important. Although (as with "holds") there is perhaps little that can be said to elucidate their meaning, it is helpful to reflect that the words are most commonly

used in situations of agency where the third party has actually asked that the activity be carried out on its behalf. But, it seems to me, that there need not be any element of request or instruction: it is also possible to do something 'on behalf of' a third party without their knowledge or approval, in particular (perhaps), where the third party has lost or accidentally left the information with the public authority. However, a claim that information is being held solely on behalf of a third party when the third party has deliberately sent the information to the public authority and has no knowledge thereafter of what may have happened to it, and no control over what is done with it, may, it seems to me, generally be treated with some scepticism. If that is the situation, as will generally be the case whenever the information in question is correspondence that has been sent to the public authority by the third party, the public authority is unlikely to be holding the information solely on behalf of the third party. Were it to be otherwise, the answer to the swathes of FOIA cases in which the information requested constitutes correspondence or documents received by the public authority from a third party would be that the correspondence was being held by the public authority "on behalf of" that third party. That is obviously not correct. There may be exemptions that will apply in such cases (eg section 41 for confidential information or section 43 for commercial information), but there is usually no question that the information is 'held' by the public authority for the purposes of FOIA. For this reason, I was concerned that the First-tier Tribunal at [60] expressed its task as being to consider whether the information was held "solely on behalf of UCEA" and at [68] answered that question in the affirmative. I have not seen the withheld information in this case, but on the assumption that it consists of correspondence sent between Professor Baldwin and other persons acting on behalf of UCEA, it seemed to me that, once that information had arrived on the University's computer system, it was unlikely that it could properly be said that the University was holding it "solely on behalf of" UCEA.

59. What properly raises a doubt in this case about whether the University is holding the information to any extent on its own behalf, however, is the question of the capacity in which Professor Baldwin was acting when receiving or generating the information in question. If he was at that time not acting "on behalf of" the University, then that raises the possibility that, at the time of the request, the information in question was still being held by the University solely on his behalf (and, only by virtue of the fact that he was acting on UCEA's behalf, on behalf of UCEA).

60. It is at the stage of analysing whether or not the public authority is holding information solely on behalf of a third party or whether it is to any extent holding it on its own behalf that the issue as to the nature of the connection between the public authority and the information arises. It is the approach to that issue that is at the heart of this ground of appeal and the dispute between the parties as to whether what is required is "a" connection or "a rational" connection or "a sufficient" connection and whether the Tribunal in this case took the right approach.

61. In this respect, it seems to me to be significant that both Judge Wikeley in *BUAV* and the Court of Appeal in *DoH* settled on the words "appropriate connection" to elucidate what needed to be considered rather than on the notion of "sufficient connection" that had crept into the judgment of Charles J from *Sugar* as I observed above when setting out the legal principles. There is in my judgment potentially an

important difference between the two which may be of legal significance in this context. It is that an 'appropriate connection' implies a *qualitative* evaluation, whereas a 'sufficient connection' suggests a *quantitative* assessment. By identifying this difference in meaning, I do not mean to suggest that a Tribunal will err in law just because it uses the word "sufficient" rather than "appropriate": what matters is what the Tribunal does in substance. I endeavour below to explain what I consider the difference in substance is between the two in this context before I consider whether the First-tier Tribunal in this case has in substance erred in law.

62. As already noted, the language of 'sufficiency' is the terminology that the Supreme Court used in *Sugar* when recognising that, despite the bright line that the Court attempted to draw in that case in favour of journalistic freedoms, there would still be judgment calls to be made in particular cases as to whether information held for mixed purposes could still properly be regarded as being held 'solely' for purposes other than journalism. It was in that context that a test of 'sufficiently direct link' or 'connection' was propounded.

63. Significantly, the guidance that the majority of the Supreme Court in *Sugar* gave about applying that 'sufficiently direct link' test in fact focused on matters of principle and policy, which their Lordships contrasted with the quantitative approach that was urged on them in that case in the form of the 'dominant purpose' test. In particular, the majority of the Court explained that judging whether or not there was a 'sufficiently direct link' was a matter of striking the right balance between the general purpose of the Act being to give public access to information and the public interest in maintaining journalistic freedoms. Lord Walker at [83] stated that what was required was: *"not weighing one purpose against another, but considering the proximity between the subject-matter of the request and the BBC's journalistic activities and end-product"* and seeking *"to strike the difficult balance of competing interests for which Parliament must be taken to have been aiming"*. Lord Brown at [106] said that what was needed was *"a question of judgment"* as to whether *"there remains any sufficiently direct link between the BBC's continuing holding of the information and the achievement of its journalistic purposes"*. Lord Phillips at [67] put it as being that: *"Information should only be found to be held for purposes of journalism, art or literature if an immediate object of holding the information is to use it for one of those purposes. If that test is satisfied the information will fall outside the definition, even if there is also some other purpose for holding the information and even if that is the predominant purpose."*

64. In my judgment, deciding whether or not a public authority is holding information solely on behalf of another within the meaning of section 3(2)(a) requires a similar principled approach, and one focused (in cases where the 'holding' element is not in doubt), on the meaning of "on behalf of" in this statutory context. That requires consideration of the nature of the connection between the public authority and the information, but the focus is not on the quantum or sufficiency of the connection but whether the nature of the connection is one that was intended to bring that information within the scope of FOIA or not.

65. As is often the case, it is easier to say what is <u>not</u> the right sort of connection, rather than to define what <u>is</u> the right sort of connection, but where the issue is ultimately

a question of fact for the Tribunal, defining the outer permissible limits of what constitutes an appropriate connection may be all that can be done. In this case, the appellant's proposal that what is required is a "rational" connection is not in my judgment helpful because there can be many rational connections between a public authority and information, regardless of on whose behalf the authority is holding the information. Nor, in my judgment, is it helpful to talk about the public authority's 'interest' in the information as the Court of Session did in the *Scottish Ministers* case. I agree with the Information Commissioner and the University that this risks spreading the net of FOIA wider than was intended. Many public authorities will have substantial IT infrastructure that they may permit to be used by a host of different persons and organisations for a multiplicity of purposes, as the University's email policy in this case envisages. Consistent with legal and best practice requirements in relation to information management, the public authority as the manager of that infrastructure will always have an interest in the information stored on it, and obligations to secure that information, and the power (and, in the case of personal data, obligations) to delete it. The public authority's reputation may be seriously affected if the information is inappropriate in some way, or if it fails to keep it secure from cyber attack. For this reason, public authorities will, like this University, have policies in place in relation to use of their IT infrastructure. However, it does not follow that all the information on the University's IT infrastructure is therefore held at least to some extent on its own behalf because it controls it and is responsible for it as information manager. It is plain from the use of the concept of *"on behalf of"* in section 3(2) that it was not intended that the Act should 'catch' information that is being held by the public authority on behalf of a third party just because the holder of information inevitably has an interest in the information by virtue of being the holder of it and thus responsible for it. Taking that approach would essentially render the provision in section 3(2) nugatory so that all information that is merely held by the public authority in the ordinary sense of that word in FOIA (discussed above) would fall within the scope of the Act. Likewise, for the same reasons, it seems to me that the reasoning in *Graham* in relation to the interest that an agent has in performing their obligations to their principal fails to pay sufficient regard to the statutory context. The definition of agent is a person who acts on behalf of someone else; with all due respect to the Court of Session in that case, the intent of the Act appears to be, as provided on the face of section 3(2), that information held by the agent in an agency relationship should be treated as being held by the principal, whether the principal is the public authority (in which case the information falls within the Act by virtue of section 3(2)(b)), or the third party, (in which case the information falls outside the Act by virtue of section 3(2)(a)).

66. I now return to the decision of the First-tier Tribunal in this case: did it in substance apply the correct legal test or did it make any error of principle in its approach. In my judgment, notwithstanding the concerns I have expressed above about certain steps in its reasoning, the First-tier Tribunal in this case did not err in law. Although it used the language of "sufficient connection", its focus was throughout on the statutory test of whether the University was holding the information to any extent on its own behalf. There was no argument in this case that the basis on which the University was holding the information at the time of the request was any different to the basis on which it had been holding the information from the time it came into

its possession. The Tribunal was right in those circumstances to focus (as it did in particular at [65]-[67]) on the capacity in which Professor Baldwin was acting when generating or receiving the information requested.

67. Ground 2 does not therefore succeed.

Ground (3) – The First-tier Tribunal failed to take into account the nature of the legal relationships between the persons/entities in this case and/or perversely concluded that the information was not held by the University given the nature of the relationship between the University itself, UUK and UCEA and between Professor Baldwin, the University, UUK and UCEA.

The parties' submissions

68. The appellant argues that, if the Tribunal had taken the proper legal approach in this case, it would have been bound to conclude that the requested information fell within the scope of FOIA, given the nature of the relationships between the University, Professor Baldwin, UUK and UCEA. His arguments as I summarised them under ground (2) above are relevant again here in relation to ground (3). He adds that the Tribunal effectively concluded that Professor Baldwin was acting as a private individual in relation to UCEA, but that cannot be right because he was at all times acting in his capacity as vice-chancellor of the University. The appellant further submits that the Commissioner's submission that there was no suggestion that the University exercised any degree of control over the information for its own purposes is a 'red herring' because 'control' is not the test for 'holding', and in any event the information is on the University's servers. He also identified that all universities have an interest in the operation of UCEA as it is an organisation that can bind them in salary negotiations. He argues that Professor Baldwin could have used the information from his dealings with UCEA in his work for the University.

69. The Information Commissioner and the University's arguments also overlap with those already summarised above in relation to ground (2). To the points already made, the Information Commissioner adds that it cannot be said that the Tribunal left out of account any aspect of the legal relationships because it considered those relationships at length, but concluded at [60] that *"the underlying corporate structure does not assist in answering the question as to whether or not the requested information is held by the University solely on behalf of UCEA"*. The Commissioner argues that the Tribunal did not find that Professor Baldwin was acting as a private individual, just that he was not acting as the University's vice-chancellor but in his own capacity as a board member and Deputy Chair of UCEA and not as a representative of the University ([65]-[66]). The Commissioner points out that the Tribunal made no finding that the University exercised any degree of control over the information for its own purposes. The Commissioner acknowledges that the University had an interest in the activities of UCEA, and points out that the Tribunal recognised it was a subscribing member. The Commissioner submits that it does not follow that the University was holding the information for its own purposes. The University in addition emphasises that it was not holding the information for its own business purposes.

My decision

70. In my judgment, this ground of appeal also fails. The appellant has not identified any material aspect of the relationship between the University, Professor Baldwin and UCEA that has been left out of account. It has properly described those relationships and, as I have concluded under ground (2), it took the right approach in principle to considering whether the University was holding the information to any extent on its own behalf. Having taken that correct approach, the decision as to whether the University was or not was a question of fact for the Tribunal to determine in this case. It cannot be challenged on appeal unless it was perverse.

71. I was initially doubtful as to whether the First-tier Tribunal had reached a conclusion that was open to it in this case. I have already noted under ground (2) aspects of the First-tier Tribunal's decision that concerned me (i.e. the references to the University holding the information solely on behalf of UCEA, and what initially appeared to me to be a failure to recognise that, where two parties correspond, the recipient will rarely be holding the correspondence received solely on behalf of the sender).

72. In addition, it concerned me that the First-tier Tribunal may have failed to attach appropriate significance to the fact that Professor Baldwin's role on the board of UCEA was not a role that he was occupying otherwise than by virtue of being vice-chancellor of this University. The First-tier Tribunal's distinction in [65] between Professor Baldwin being "on the board in his capacity as a vice-chancellor of a university rather than as the vice-chancellor of the University" seemed to be over-technical and potentially wrong. That is because, as a matter of fact, he is vice-chancellor of this University, he was only eligible for appointment to the UCEA board as a result of that role and if he were to lose his position as vice-chancellor of this University, he would also cease to be a member of the board of UCEA because he would no longer be a University vice-chancellor. Those factors, it seemed to me, perhaps ought to lead to the conclusion that he was not acting solely on UCEA's behalf in relation to the information but also acting at all times in his capacity as vice-chancellor of this University and thus on this University's behalf, so that the information could not be said to be held by the University solely on behalf of Professor Baldwin in his UCEA capacity.

73. However, ultimately, I have concluded that I am satisfied that the First-tier Tribunal's conclusion is one that was open to it on the facts of this case.

74. The distinction that the First-tier Tribunal makes in [65] is a fine one, and a technical one, but it is one that is consistent with the principles that must be applied in such cases as I have identified them under ground (2). I wholly reject the appellant's arguments that rest on the nature of the University's interest in UCEA's activities; the fact that UCEA is a representative organisation with responsibility for representing the interests of subscribing institutions, including the University, plainly does not mean that information 'belonging to' UCEA is being held "on behalf of" the University, wherever it may be held. That argument rests on the concept of the University having an interest in UCEA which, for the reasons I have set out above under ground (2), is not what matters for the purposes of section 3(2). UCEA and

the University are separate organisations and, in the ordinary course, they are each in relation to all their activities acting on their own behalf, not on behalf of each other, despite the representative nature of UCEA's activities.

75. As a matter of fact, Professor Baldwin was appointed to UCEA by UUK, not by the University, and it is right to attribute significance to that even though his role in UUK is one that he acquired automatically as a result of his position at the University, and even though he is in UUK representing the interests of the University. His role with UCEA is different. He was not appointed to it by the University, it is a not a role that automatically comes with being vice-chancellor of the University and he is not in that role representing the University. While he may carry out the role with UCEA wearing his University 'hat', and would not have been eligible for appointment without that 'hat', and is permitted to use the University's IT infrastructure and resources for carrying out the role, he is when carrying out that role acting not on behalf of the University, but solely in his capacity as agent or representative of UCEA. Accordingly, information that he acquires in that role is information that he acquires in that capacity and, wherever it is held, is held on behalf of him in that capacity. Unless that information is passed on by him to other colleagues in the University, or the University itself exercises the power it has over the IT infrastructure to access and use that information (as might happen, for example, if a grievance or disciplinary case required that information to be considered), it seems to me that it is right to conclude that the University is not holding the information to any extent on its own behalf. As there is no suggestion in this case that the information had been passed on or used in this way, there is in my judgment no error of law in the First-tier Tribunal's conclusion in this case.

Conclusion

76. For all these reasons, the grounds of appeal do not succeed and the appeal is dismissed.

Holly Stout
Judge of the Upper Tribunal

Authorised by the Judge for issue on 12 January 2026