

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 20 February 2018

**Public Authority:** Queen Mary University of London

**Address:** Mile End Road

London

E1 4NS

### Decision (including any steps ordered)

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1. The complainant has requested the minutes of meetings of the Trial Steering Committee and Trial Management Group of the PACE trial. The trial was concerned with treatments for chronic fatigue syndrome. The Queen Mary University of London (the university) withheld the information under section 36 – prejudice to the conduct of public affairs.
2. The Commissioner's decision is that university is entitled to rely on the exemptions provided by section 36 in respect of information identifying individuals and the contribution of the body representing patients. Section 36 cannot be relied on in respect of the remaining information. However some of that remaining information is exempt by virtue of section 40(2) – personal information. A short confidential annexe has been produced to identify the information which may be withheld. This will be provided exclusively to the university.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - To disclose the minutes apart from that information which is identified in the confidential annex.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 26 March 2017 the complainant emailed the university regarding the 'Comparison of adaptive pacing therapy, cognitive behaviour therapy, graded exercise therapy, and specialist medical care for chronic fatigue syndrome (PACE): a randomised trial' and requested information of the following description:

"1. Please provide minutes of the Trial Steering Committee.

2. Please provide minutes of the Trial Management Groups."

6. On 21 April 2017 the university responded. It refused to provide the requested information relying on the following exemptions as the basis for doing so:

- section 36(2)(b)(i) – inhibition to the free and frank provision of advice,
- section 36(2)(b)(ii) – inhibition to the free and frank exchange of views for the purposes of deliberation, and
- section 36(2)(c) – prejudice to the conduct of public affairs

The complainant requested an internal review on 18 May 2017. The university informed the complainant of the outcome of the review on 13 June 2017. The university maintained its original decision and continued to withhold the information under the exemptions provided by section 36(2)(b) and (c).

## Scope of the case

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7. The complainant contacted the Commissioner on 26 June 2017 to complain about the way his request for information had been handled. Although he was aware that the Commissioner had previously found the exact same information was exempt under section 36, a decision upheld at Tribunal (*Mitchell v Information Commissioner and QMUL* 22 August 2013 EA/2013/0019), he argued that in the intervening period new doubt had been cast on the rigour of the trial. He also argued that the submissions provided by the university to the Commissioner and the Tribunal in the earlier case should be viewed as unreliable in light of, what he believed to be, undeclared conflicts of interest. He considered that together with the passage of time these two points significantly shifted the balance of the public interest so that it now favoured disclosing the information.

8. The Commissioner considers that the issue to be determined is whether any of the exemptions provided by section 36 are engaged and if so whether the public interest in favour of maintaining the exemption outweighs the public interest in disclosure. For completeness she has also considered whether any information should be withheld under section 40(2) – personal information, to avoid any breach of the Data Protection Act 1998

## **Background**

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9. The university was the main sponsor of the PACE trial. It was funded by the Medical Research Council, the Department of Health, the Department of Work and Pensions and the Scottish Chief Scientist's Office. The trial compared how effective different treatments for chronic fatigue syndrome were. It involved over 600 patients who were split into four groups, each group received different treatments for the condition. The initial planning for the trial commenced in 2002 after which patients were recruited between 2005 and 2010. Following peer review the findings were published in the Lancet in March 2011. The trial found that cognitive behaviour therapy and graded exercise therapy were more effective treatments for chronic fatigue syndrome than either specialist medical care or pacing therapy.
10. The causes, and therefore the treatment, of chronic fatigue syndrome is a contentious area of science. The Commissioner understands that there are those who believe it has a physical cause and therefore should be treated as such, while another school of thought approaches its treatment from a psychiatric perspective. The two treatments found by the trial to be most effective are psychiatric therapies. Some patients and patient groups maintain that by ignoring the physical cause of the condition, these two therapies can result in patients suffering adverse effects. The rigour of the methodology employed in the trial and its results were therefore challenged, the validity of those challenges is debated as is the extent to which trial's findings are generally accepted within the scientific and medical community. It is fair to say however that the trial attracted some controversy.

## **Reasons for decision**

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### **Section 36 – prejudice to the conduct of public affairs**

11. So far as is relevant, section 36(2) provides that information is exempt if, in the reasonable opinion of the qualified person, its disclosure
  - (b) would or would be likely to inhibit:
    - (i) the free and frank provision of advice, or
    - (ii) the free and frank exchange of views for the purpose of deliberation, or
  - (c) would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs.
12. Section 36 is unique in that its application depends on the qualified person being of the opinion that the inhibition or prejudice envisaged would, or would be likely to occur. In determining whether the exemption is engaged the Commissioner is required to consider the qualified person's opinion as well as the reasoning that informed the opinion. Therefore the Commissioner must:
  - Ascertain who the qualified person is,
  - Establish that they gave an opinion,
  - Ascertain when the opinion was given, and
  - Consider whether the opinion was reasonable.
13. The designated qualified person for the university is its Principal and the university has provided the Commissioner with a copy of the submission made to the Principal for consideration when applying section 36 together with a record of the Principal's decision. This shows that on 11 April 2017 the Principal, acting as the qualified person, decided that all three limbs of section 36(2) were engaged in respect of all the requested information.
14. The Commissioner is satisfied that the first three requirements of the test set out above are met. It is now necessary to consider whether that opinion was a reasonable one in respect of each exemption.
15. When considering reasonableness the Commissioner relies on the Oxford English Dictionary's definition of reasonableness, that is, the opinion must be "in accordance with reason; not irrational or absurd". There can be more than one reasonable opinion on a matter and it is not necessary for the Commissioner to agree with the qualified person's opinion. The qualified person's opinion can only be considered unreasonable if it is one that no reasonable person could hold.
16. The exemption can be engaged on the basis that the inhibition or prejudice either 'would' or 'would be likely' to occur. It is clear from

records provided by the University that the qualified person considered the inhibition and prejudice envisaged 'would be likely' to occur.

17. The Commissioner has considered what information was made available to the qualified person when his opinion was sought. It is noted that he did not have access to the actual minutes which are the subject of the request. He was however provided with a submission which included the complainant's arguments in favour of disclosing the information. In addition, as an academic himself, he has a great deal of knowledge of how research projects are run and, because of his position within the university and the high profile nature of this trial and its findings, he was familiar with the issues around this particular trial.
18. The arguments for engaging the three exemptions are interrelated. The university's argument is that researchers need to be free to engage in the unpressurised exchange of views and advice in order that the decision making process during the evolution of the project is as robust as possible. Such freedom underpins high quality research. If those contributing to these discussions were concerned that their views or advice would be made public at a later date the candour of those discussions would be compromised. The treatment of chronic fatigue syndrome is a contentious area of science and the university considers that those involved in this area of work have concerns that they could become the target of adverse criticism in the event their research was not accepted by those who favour the condition being treated purely as a physical illness. While all researchers would recognise the importance of their work being peer reviewed and the potential for it to be criticised by fellow academics, the university argues that there is a history of researchers into chronic fatigue syndrome attracting personal abuse, having their integrity called into question and, in the worst cases, they may risk threats of physical violence. In light of this, it argues, there is genuine concern that disclosing minutes in which difficult issues may be debated and in which specific views and opinions are attributed to individuals, would lead to much less candid discussions in the future. It has directed the Commissioner to an article in the British Medical Journal to support its position<sup>1</sup>.
19. Although many of the researchers are already known through being named as co-authors of research's findings, the university considers there is a difference between being associated with jointly published, peer reviewed work, and being individually identified with particular comments and decisions relating to the direction taken by the trial. The level of hostility which researchers in this field may attract will be considered more fully later. However the Commissioner accepts that given the controversy around the trial, any minutes that were released

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<sup>1</sup> Dangers of research into chronic fatigue syndrome by Nigel Hawkes (BMJ 2011; 342:d3780 doi: 10.1136/bmj.d3780)

would be closely scrutinised and those opposed to the trial may seek to try and use the minutes to criticise its findings. Therefore it is not unreasonable for the qualified person to consider the risk of a hostile response when deciding whether disclosure of the minutes would inhibit the free and frank exchange of views, or provision of advice.

20. In respect of section 36(2)(c) the qualified person is of the opinion that fear of reprisals for involvement in this field of scientific research would result in researchers abandoning this area of work in favour of less controversial ones. Alternatively researchers may choose to relocate to establishments which are not subject to the FOIA, where they could continue their work with the assurance that their contributions the management or steering committees of such research, would remain confidential. Either way the key objective of any university, including the Queen Mary University London, is to carry out research and that objective would be undermined if researchers did not feel free to pursue work in controversial fields.
21. In light of the above the Commissioner finds that the qualified person's opinion that the free and frank exchange of views and advice would be inhibited if the minutes were disclosed is a reasonable one. The Commissioner is also satisfied that it is not unreasonable to consider the disclosure would prejudice the university's key objective of conducting research. The three exemptions provided by section 36(2) are engaged.

### **Public interest test**

22. Section 36(2) is subject to the public interest test as set out in section 2 of the FOIA. This provides that even though an exemption is engaged the information must still be released unless, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.
23. By finding the qualified person's opinion is a reasonable one the Commissioner has accepted that there is some possibility that disclosing the minutes could inhibit the decision making of future research teams and prejudice academic research by deterring people from working in contentious areas of science. The public interest test requires consideration of the severity, frequency and extent of that inhibition and prejudice. That harm is then weighed against the value in releasing the information.
24. In favour of disclosure there will always be general arguments relating to the value of transparency and accountability. In this case though there are some weighty additional arguments. It is clear from the submissions provided by the complainant, together with internet searches conducted by the Commissioner that some academics have challenged the methodology adopted in the research. In particular there

appear to be issues around the consequences of the trial being 'un-blinded' and the fact that the criteria for judging whether patients had benefitted from the treatment they received were changed during the trial. The university has argued that the criticism is unmerited and that the trial is not controversial among the majority of scientists in the field, or indeed experts in clinical trials. However the fact remains that questions have been raised about potential flaws in the trials design. There is therefore a valid public interest in disclosing information that would shed light on decisions about how the trial was conducted. The public interest in disclosure is heightened by the fact that the trial cost £5million of public money and clearly there is a value in understanding whether the research provided value for money.

25. Since the university's original decision in September 2012 to refuse a request for this information, the decision subsequently upheld by the Tribunal in the Mitchell case in June 2013 (see paragraph 7), data from the trial has been released. This was in response to a later information request which also went to Tribunal. The Tribunal ordered the disclosure of this trial data in 2016, see *Queen Mary University of London v The Information Commissioner and Matthees* 12.08.2015 (EA/20015/02069). That data has now been reanalysed by a number of academics. The complainant has provided the Commissioner with a number of articles including ones contained in the *Journal of Health Psychology* which are critical of the trial's findings and whose authors include academics. The Commissioner is not in a position to comment on the validity of the criticism. However she is satisfied that the articles are evidence that the trial's findings are disputed within the scientific community.
26. It should be noted however that the fact that some trial data has now been disclosed and re-analysed goes some way to satisfying the public interest in understanding the trial and allowing a wider and better informed debate about its conclusions.
27. The minutes of the management group and the steering committee do not focus exclusively on the design of the trial. Much of the information, especially of that contained in the minutes of the management group, is more concerned with the practicalities of running the trial, for example issues of funding and costs, the recruitment of staff, arrangement for covering absences and the recruitment of patients for the trial. Nevertheless the Commissioner is satisfied that some of the information does address the issues which have attracted particular criticism and may signpost the public to where more detailed records on those issues may be held. The minutes also record the issues faced by the research team as the trial progressed and how the team strove to overcome any problems and ensure the integrity of the trial. The Commissioner is therefore satisfied that there is a public interest in disclosing the information.

28. The university itself recognises there is a public interest in disclosing information that may increase the public's understanding of chronic fatigue syndrome and particularly in respect of how this trial was managed due it attracting disparate points of view.
29. The Commissioner notes that the complainant has raised concerns over the declarations relating to conflicts of interests. He maintains that some of the researchers involved in the trial failed to declare all such conflicts. In response to later requests the university has now disclosed letters relating to conflicts of interests from members of steering group. These were not however available to the complainant at the time of the request. In respect of the management group relevant declarations of conflict of interest were set out in the Lancet paper when the trial's findings were first reported; these were available at the time the request was made.
30. The complainant argues that the existence of these conflicts of interest means that the public is unable to have confidence, for example, that the steering committee made objective decisions when considering changes to the trial protocols proposed by the management group. Furthermore, he argues that such failings provide plausible grounds for suspecting there was further wrong doing in the way the trial was designed and managed. The Commissioner has considered the complainant's arguments on this point. She is not convinced examples of conflicts of interest identified by the complainant would require them to be declared. Nor is she satisfied by the complainant's suggestion that many of those involved in the trial were biased in favour of proving the efficacy of psychiatric treatments for chronic fatigue syndrome because they had previously worked in those fields. Such research would only be undertaken by those with knowledge of the condition, obtained through the treatment of the condition, whether that treatment was a psychiatric treatment or not. This does not mean that they are unable to carry out robust research or analyse its outcomes objectively.
31. The Commissioner does not find there is any weight to the complainant's arguments regarding potential conflicts of interest that would suggest the researchers purposely set out to devise a trial that would support the use of psychiatric treatments. This does not however rule out the possibility that there were flaws in the way the trial was designed which could undermine how reliable its findings were. The Commissioner would emphasise that she is not suggesting there were flaws; that is a matter for others to consider, and which is at the heart of the public interest in disclosure. However she has found no reason to question the integrity of the researchers or those involved in the steering committee.
32. At the heart of the university's arguments in favour of maintaining the exemptions is the need to preserve the academic freedom of researchers to explore contentious, or unpopular areas of science



without fear of some form of reprisal. This is based on the university's belief that there exists a group of patient activists who feel so strongly that research into chronic fatigue syndrome should focus solely on it being a physical illness that they would seek to discredit any work which takes a psychiatric approach. This would include not only criticising its results and making allegations that the results had been spun, but also to attacking the competence and integrity of the researchers. The university has directed the Commissioner to the BMJ article by a freelance journalist, that is referred to in paragraph 18 above. The article describes the hostility encountered by some researchers believed to advocate a psychiatric approach to chronic fatigue syndrome. It is important to note that the article describes the problems faced by scientists working in this field generally, rather than specifically those involved in the trial to which this request relates. That article lists different levels of personal abuse, including the work of one researcher being compared to the experiments carried out in concentration camps during WWII, complaints made to both the GMC and to the employers of researchers, as well as threats to the personal safety of individuals.

33. The university has also directed the Commissioner to an internet forum<sup>2</sup> for sufferers of chronic fatigue syndrome. In particular the university provided a link to a discussion on that forum which commented on the Tribunal's decision to uphold the refusal of the earlier request for these minutes. Many of the comments are disparaging of both the judgement and the research itself. The Commissioner considers that although anyone unaccustomed to facing a disgruntled audience is likely to find some of the comments unpleasant, the dissatisfaction is not expressed in such strong terms that it would cause those against who it is directed at any real concern.
34. The complainant points to the Tribunal's comments in the Matthees case (referred to in paragraph 25) that the university had grossly over exaggerated the extent of activist behaviour. However these comments were made in respect of a request for different information (some of the actual data generated by the trial) and the issue was the extent to which activists may try to identify, and then harass, patients who had participated in the trial. The Commissioner notes that in the Matthees case one of the university's witnesses accepted that although unpleasant things had been said to and about researchers in the trial, no actual threats had been made. Taking all this into account, the Commissioner considers some caution is required when weighing the arguments presented by the university around the impact of patient activists.

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([http://forums.phoenixrising.me/index.php?search/44188259/&q=PACE&o=date&c\[title\\_only\]=1](http://forums.phoenixrising.me/index.php?search/44188259/&q=PACE&o=date&c[title_only]=1))

35. Nevertheless the Commissioner is not prepared to completely dismiss the risks faced by some of the leading figures associated with treating chronic fatigue syndrome as a psychiatric problem as described in the BMJ article. This is the reason why the Commissioner is satisfied that the qualified person's opinion could not be considered unreasonable. So although the Commissioner is not satisfied that all patients who oppose the use of psychiatric treatments for the illness can be characterised as an 'activist', she does not rule out the possibility that there is a very small minority who may pursue their arguments through less legitimate means. When weighing the public interest the question is, whether disclosing the requested information would increase the risk to those already targeted, or bring other, lower profile, researchers to the attention of such activists.
36. As referred to earlier, a significant amount of the requested information relates to fairly work-a-day issues such as budgets and progress in recruiting patients. It is very difficult to see how the disclosure of such information could trigger the reaction feared by the university. Given the mundane nature of many of the minutes the Commissioner considers it would have assisted the university's position if it had identified any information of particular sensitivity to demonstrate its concerns. Its adoption of a blanket approach to the application of section 36, rather than considering a partial disclosure, is further undermined by the fact that the university has subsequently disclosed some information from the minutes regarding declarations of interest when dealing with a later request (see paragraph 29).
37. The Commissioner considers that although disclosing the minutes in full may raise concerns amongst researchers, if names and initials were redacted from them, any significant risk would be removed as this would mean that researchers and steering committee members would not be associated with particular comments, and that lower profile individuals would not be identified. The Commissioner also considers it is far less likely that publishing anonymised minutes would provoke renewed hostility, to any significant degree, against those individuals who are already subject to the sort of harassment described in the BMJ article.
38. The university has acknowledged that the names of some of the attendees of the meetings may already be in the public domain because, for example, they are named as co-authors of the research's findings. But it has said there is a qualitative difference between this shared level of responsibility for the work and being individually identified as participating in a particular meeting, or being directly associated with minuted comments. Redacting the names and initials of those referred to in the minutes would address the university's concerns. Redacting the venues for meetings would prevent assumptions being made that staff associated with a particular institute were in attendance.

39. Not only does anonymization reduce any risk to those individuals, it would allow unfettered discussion of the agenda items. The Commissioner accepts that to disclose un-anonymised minutes could signal that future discussions of such matters, by other research teams, could also be disclosed and so prevent similar issues being fully aired in the future. This is the so called chilling effect and the Commissioner will return to this subject in relation to other information contained in the minutes later. The Commissioner also considers that disclosure of information identifying individuals would not increase the public's understanding of whether the trial was 'un-blinded', or concerns over whether the criteria for judging the efficacy of different treatments were changed during the trial. The public interest therefore favours withholding this information.
40. The remaining information addresses a variety of issues, much of it appears fairly mundane. A limited amount does deal with the extent that the trial could be blinded and discussions around the criteria to be adopted for judging the efficacy of the different treatments. The minutes of the earlier meetings in particular record discussions of the trial's objectives and debates around the methodology to be adopted. These were clearly frank discussions where a range of opinions were shared in order to ensure sound decision making.
41. The university has said that researchers and those involved in the steering group of such trials require a safe space in which to fully determine the methodology of the trial and deal with any issues that arise while the trial is underway. The Commissioner recognises the need for privacy so that academics can provide candid advice and fully express their opinions when dealing with live issues. This need for safe space is heightened where the trial concerns an area of science known to be contentious. However that need for safe space only exists while those issues are being debated internally, and potentially for a short time after those issues have been decided. In this case the findings of the research were published back in 2011. Therefore by the time the request was made in 2017 the need for safe space had long passed.
42. The university's main argument though is that disclosing these minutes would have a chilling effect on those involved in future research work and the candour of their discussions. The Commissioner accepts the possibility of there being such an effect. However the extent of that effect is dependent on the actual information in question. In this case much of the information appears fairly work-a-day and the university has not identified particularly sensitive issues. Furthermore, individuals' sensitivity to the disclosure of such information would be greatly reduced once it had been anonymised. However the Commissioner recognises that this may not extinguish the concerns of future research teams completely and so attaches some weight to the university's chilling effect argument. Although the extent of the effect may be

reduced, it would be felt frequently as research forms a very significant part of the university's work. The impact would not be limited just to Queen Mary University London, but potentially to all research establishments that are subject to the FOIA.

43. When assessing the chilling effect the Commissioner has paid particular attention to its impact on the patient representative body involved in the trial. The involvement of such a body helps ensure that patient concerns are accommodated as far as possible and helps in the recruitment of patients to the trial. Their role is an important one. During meetings there may be occasions when a representative from such a body needs to give an initial view on the issue being discussed without having had the opportunity to consult their own colleagues on the matter. The Commissioner therefore considers the input of such a body may be more susceptible to the chilling effect. Therefore the Commissioner considers there are stronger grounds for withholding such information.
44. In respect of sections 36(2)(b)(i) and (ii), the inhibition to the free and frank provision of advice and exchange of views the Commissioner finds that, once the minutes have been anonymised and the input from the patient representative removed, the public interest favours disclosing the remaining information. This is because of a number of factors. Primarily there is a genuine debate about the methodology used in the trial and the validity of its conclusions. This should not be seen as criticism of the research, it is simply that there is a debate by amongst, at least some, members of the scientific and medical community as to the rigour of the research. The criticism cannot be dismissed as the grumblings of a tiny disgruntled section of the patient community. The Commissioner is satisfied that to some extent the minutes would inform that debate. Secondly once the information has been anonymised the risk of individuals being targeted for abuse or harassment would be greatly reduced. This in turn would reduce the chilling effect that disclosure would cause. The final two points that sway the balance in favour of disclosure are the length of time that has passed since the information was created and the uncontentious nature of much of the information. In respect of those minutes which are more revealing of how decisions on the objectives and methodology of the trial were made, the Commissioner recognises the importance of researchers being able to debate such matters freely. This is the more sensitive information. However there is also a greater public interest in disclosing this information in light of the debate around the robustness of the trial's findings. Although discussion of these issues deserved to be protected by safe space while the trial was ongoing, once the researchers had soundly debated and resolved these matters the need for safe space no longer existed and the research team should be able to justify its decisions.

45. When applying the public interest test to the exemption provided by section 36(2)(c) - otherwise prejudice the conduct of public affairs, the arguments in favour of disclosure remain the same as set out in paragraphs 24 to 31 above.
46. The university has argued that disclosing the minutes would deter research into controversial fields and so impede academic freedom. These eventualities flow from concern over that researchers would attract hostile criticism if the minutes were disclosed. These risks have already been considered above. Although the Commissioner found the risks had perhaps been overstated, she did not dismiss the risks posed entirely and regardless of the actual risk that exists, it would appear that some researchers do have concerns over being associated with contentious areas of science.
47. The university has argued that because of these concerns their most talented and experienced researchers would either abandon work on controversial issues in favour of less contentious fields, or take their research to other institutions which are not subject to the FOIA. The Commissioner follows the logic of the university's argument, but when considering the potential for individuals to attract such abuse found the risk could be much reduced by anonymising the minutes.
48. Finally the university has argued that to disclose the minutes and render the researchers vulnerable to malicious abuse would impede their academic freedom as enshrined in law. In particular it has directed the Commissioner to The Charter of Fundamental Rights of the European Community. Article 13 provides that,

"The arts and scientific research shall be free of constraint. Academic freedom shall be respected"
49. The Commissioner accepts that academic freedom and protection for scientific research are important concepts for the good of society, and will be a strong factor in the public interest, where relevant. However the Commissioner is not under a specific duty to give effect to Article 13, when making decisions in respect of the FOIA as it only applies when implementing EU law. As the FOIA is domestic law, the Commissioner does not consider there is a specific duty to consider the charter in this case.
50. The university has also referred to section 202 of the Education Reform Act 1988 which recognises the need to protect academic freedom,

"To ensure that academic staff have freedom within the law to question and test received opinion, and to put forward new ideas and controversial or unpopular opinions, without putting themselves in jeopardy of losing their jobs or privileges they may have at their institutions"

51. However the Commissioner has no evidence that suggests institutions would take any form of action against academics which would equate to academic jobs or privileges being jeopardised. On the contrary it appears from the university's submission that it at least would strongly support its academic staff.
52. The university has said that there is no precedent that it is aware of for releasing minutes of management groups and steering committees involved in trials. This is not itself a strong argument in favour of withholding the minutes. To give weight to such an argument would in effect create a blanket exemption from disclosure under the FOIA for all minutes of research teams. Furthermore the fact that minutes have not been disclosed before introduces an element of there being a fear of the unknown, with researchers and universities speculating that the very worse outcomes would result from disclosure. Each case has to be considered on its own merits, taking account of both the nature of the information and circumstances that exist at the time a request was made.
53. Research into chronic fatigue syndrome is important. The causes are not well understood and there are differing opinions on how the illness should be treated. It can have a devastating impact on the lives of sufferers. There is a very real public interest in ensuring such research continues. There will also be academics working in other contentious areas of science who may be deterred from continuing their work if disclosure of the requested minutes led to researchers being abused, or threatened. Therefore there is the potential for any harm caused to be felt frequently. However the Commissioner is not satisfied that the severity of such a harm would be very great. As a consequence, any nervousness about the disclosure is more likely to be short lived and would not impact on the conduct of researchers into chronic fatigue syndrome in the future, or in other areas of work to any significant degree.
54. Against this limited prejudice to academic freedom and the university's ability to conduct research, it is necessary to weigh the public interest in informing the debate of the trial's findings. This is particularly important as the trial's conclusions support the treatment of sufferers using methods that, certainly some patients, believe causes them harm. Having weighed the public interest factors in favour of disclosing the information against the public interest in favour of maintaining section 36(2)(c) the Commissioner finds that the public interest favours disclosure of a redacted set of minutes.
55. A confidential annexe will be provided exclusively to the university setting out the types of information that may be withheld under section 36(2). This is limited to the anonymization of the minutes and the removal of information relating to the patient representative body.

## **Section 40(2) – personal information**

56. Having reviewed the minutes the Commissioner notes that on occasions they deal with specific staffing issues, for example where a member of the team is on sick leave, maternity leave, or has left to take up a new position. It could be argued that such information is exempt under section 36(2)(b) on the basis that such issues can only be properly discussed with the assurance of confidentiality. However the information in question lacks the qualities of advice or the expression of views; often simply being an announcement of the change in staff. Therefore as a responsible regulator of both the FOIA and the Data Protection Act 1998 (DPA) the Commissioner has considered whether the information would be exempt under section 40(2).
57. So far as is relevant, section 40(2) provides that information is exempt if it is personal data of someone other than the person making the request and its disclosure would breach any of the data protection principles set out in the DPA.
58. The Commissioner is satisfied that information in question, which will be detailed in the confidential annex to this notice, both relates to and identifies living individuals. It is therefore personal data as defined in section 1 of the DPA.
59. The first data protection principle provides that personal data shall be processed fairly and lawfully. 'Processing' includes the disclosure of personal data to third parties.
60. In assessing fairness the Commissioner will take account of the reasonable expectations of the individual concerned, the consequences of disclosure on the individual and the legitimate public interest in releasing the information.
61. The Commissioner finds that there is a general expectation that details of personnel issues, such as sick leave or maternity leave, would remain private between the member of staff and their employer. To disclose such information to the world at large would be an intrusion into the individuals' private lives. Importantly the Commissioner does not consider that the disclosure of this information would shed any light on the rigour with which the trial was conducted. There is no legitimate public interest in its disclosure. The Commissioner therefore finds that the disclosure of this information would be unfair and therefore breach the first principle. It is exempt under section 40(2). The university is entitled to redact this information.

## Right of appeal

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62. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504  
Fax: 0870 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

63. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

64. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Pamela Clements  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**