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By email only to: [REDACTED]

28 December 2023

Dear [REDACTED]

**Request for internal review under the Freedom of Information Act 2000 ("the Act")**

Further to your recent request for an internal review of our original decision (reference number: 501.23), I am writing to confirm that the University is partly upholding its original decision of 23 November 2023.

**Your original request**

We received your information request on 11 August 2023 and treated it as a request for information made under section 1(1) of the Act. The request was as follows:

*It has been reported that the Lau China Institute was set up following a donation from Dr Lau Ming-wai, who is based in Hong Kong. Please provide*

- a) emails sent in 2011 and 2012 between KCL staff responsible for administering this donation and Dr Lau,*
- b) any due diligence conducted by KCL on Dr Lau,*
- c) a list of Dr Lau's visits to the Institute,*
- d) any agreement or MoU signed in relation to this gift,*
- e) details of any requests Dr Lau made in respect of his gift or has made since,*
- f) details of any further donations by Dr Lau, or any other 'ongoing support' as mentioned here (<https://www.kcl.ac.uk/lci/assets/ming-wai-lau-summary-report-final-2020.pdf>)*
- g) information as to how Dr Lau's donation is held by KCL. Is it invested? Is it in an endowment?*

On 12 August 2023 we requested clarification as follows:

*Further to your request for information dated 11<sup>th</sup> August 2023, please can you clarify the following part(s) of your request:*

- b) any due diligence conducted by KCL on Dr Lau,*
- c) a list of Dr Lau's visits to the Institute,*

*d) any agreement or MoU signed in relation to this gift,*

*Please can you provide the time frame you are interested in for the above questions.*

On 14 August 2023 you provided the following clarification:

*The University must do its due diligence before receiving the money, so I think b) is self explanatory. The same goes for d): the MoU or agreement would date from the time the gift was agreed...*

*c) should be in the last ten years.*

On 12 September 2023 we asked for further clarification as follows:

*Following enquires with the relevant departments, please can you clarify the following part of your request:*

*f) details of any further donations by Dr Lau, or any other 'ongoing support' as mentioned here*

*Unfortunately, the link you have provided does not work, therefore please can you clarify if you are interested in further donations by Dr Lau to the Lau institute or to King's College London as a whole.*

On 2 October 2023 you provided the following further clarification:

*Any further donations by Dr Lau to the Institute or King's as a whole.*

### **Our original response**

We provided our response to your request on 23 November 2023 as follows:

*a) Emails sent in 2011 and 2012 between KCL staff responsible for administering this donation and Dr Lau,*

*b) Any due diligence conducted by KCL on Dr Lau,*

*c) A list of Dr Lau's visits to the Institute,*

*d) Any agreement or MOU signed in relation to this gift,*

*e) Details of any requests Dr Lau made in respect of his gift or has made since,*

*f) Details of any further donations by Dr Lau, or any other 'ongoing support' as mentioned here*

*(<https://www.kcl.ac.uk/lci/assets/ming-wai-lau-summary-report-final-2020.pdf>)*

*g) Information as to how Dr Lau's donation is held by KCL. Is it invested? Is it in an endowment?*

*The table below provides details relevant to your request as held by the University:*

<b><i>Amount Pledged</i></b>	<b><i>Gift Date</i></b>	<b><i>Fund Description</i></b>
<i>£1,000,000</i>	<i>24th August 2020</i>	<i>Lau China Institute Discretionary Fund</i>
<i>£4,000,000</i>	<i>24th August 2020</i>	<i>The Lau China Institute</i>
<i>£6,000,000</i>	<i>1st September 2011</i>	<i>The Lau China Institute</i>

*Further requested personal information, to the extent that it is held by the University, is withheld under section 40(2) of the Act, on the grounds that disclosure would exceed the data subject's reasonable expectation and breach the data protection principles enshrined in the Data Protection Act 2018.*

### **Your internal review request**

On 30 November 2023, you confirmed your request for an internal review of our original decision and stated the reasons for the review as follows:

*Lau China Centre is more or less the biggest China studies institute in the country. China studies have been identified as critical to our future by the UK government, because China has been called an "epoch-defining challenge". But the donor here, Lau Ming-wai, is a political figure in Hong Kong, where criticising the CCP is illegal. In theory he could obviously be exerting or have exerted influence over the UK's biggest China studies institute... There is a very clear public interest in his visits, donation requests + any agreements signed and due diligence, along with everything else I asked for, being published.*

### **Our review**

My review has considered the points that you have made and I make the following comments:

In the course of my review, I have considered two Information Commissioner decision notices and, it is my view, that these recent decision notices support the refusal to disclose most of the information requested (for completeness, I note that the first decision is, I believe, under appeal):

<https://ico.org.uk/action-weve-taken/decision-notices/ic-217933-t3t1/>  
<https://ico.org.uk/action-weve-taken/decision-notices/ic-153644-g0j2/>

As you will see, in addition to supporting the use of the exemption at S.40(2) – personal information, two further exemptions also apply here:

S.41 – confidential information

S.43(2) – commercial interests, “would be likely to” prejudice KCL’s interests

Based on these decisions, and my own considerations, the following arguments are relevant to your request:

### **Section 40(2) – third party personal data**

Section 40(2) of FOIA allows a public authority to withhold information, which is the personal data of someone other than the requester, if there would be no lawful basis, under data protection legislation, that would allow for that personal data to be disclosed/published.

Information will be personal data if it identifies a living individual and either has that individual as its focus or is of biographical significance to that individual. It is the nature of this request that most of the information sought is third party personal data - the majority

of the information requested identifies the Donor: either directly, by name, or indirectly by reference to their activities and interests. We, therefore, then have to go on to consider whether there is nevertheless a lawful basis that would allow for the, or some of the, information to be published.

As the Commissioner sets out in the above decisions, the only lawful basis on which the information could be disclosed would be if it was necessary in order to satisfy a legitimate interest.

We accept that there is a legitimate interest in knowing whether the acceptance of such money is in accordance with a process, albeit that any such interest must still be balanced against the rights of the data subjects (I cannot give any weight to the speculative ‘theory’ that you partly base your review on).

Accordingly, we provide below information on our policy that governs our decisions to accept or reject donations. The other details requested are less important than the mechanism we have put in place. Therefore, disclosure of any additional details would be contrary to the Donor’s reasonable expectations.

In the case of detailed information, I am satisfied that the Donor’s rights as a data subject outweigh any legitimate interest. As a result, there is no lawful basis on which the information could be disclosed and thus we were entitled to rely on section 40(2) of FOIA to withhold much of the information.

#### **Section 41 – information provided in confidence**

Information is exempt from disclosure if it was obtained by a public authority from any other person and the disclosure of the information to the public would constitute a breach of confidence actionable by any person.

With regards to emails/communications between the Donor and the College, these clearly represent information provided to us by a third party.

I am satisfied that discussions between and about the Donor, and the donations provided to the College, is information which has the necessary quality of confidence. It is not trivial information – it is personal and private information relating to the Donor and their engagement with the College. It is information which is also not otherwise accessible to the general public.

Accordingly, this part of the withheld information was imparted in circumstances giving rise to an obligation of confidence.

In terms of any disclosure causing detriment to the confider, I am satisfied that any invasion of privacy resulting from a disclosure of private and personal information can be viewed as a form of detriment in its own right.

The information is private and personal in nature and relates to the Donor’s finances and personal interest in the College from a donation point of view. There is a significant

expectation of confidentiality in relation to such private discussions around the donations provided and no overriding public interest arguments exist which would act as a defence to an actionable breach of confidentiality.

### **Section 43(2) – commercial interests**

The College is in competition with other higher education institutions to secure donations. The donations we receive enable us to maintain and enhance the quality of our research and teaching, thereby enabling us to continue attracting the most talented students and staff.

Disclosure would, therefore, be likely to prejudice our commercial interests if it became known, that as a result of any FOI request, the College was required to reveal detailed information collected on/from that donor, as it would send a message to all existing or prospective donors that the College was not able to protect their privacy. There are other options for prospective donors to turn to if they lose confidence in the College.

Potential donors would be likely to conclude that any dealings that they may have with the College would not be on a confidential basis. This in turn would be likely to deter them from making donations and encourage them instead to support other causes or institutions. Moreover, existing donors would be less likely to donate again, contrary to the normal pattern of giving.

Donors may expect the College to carry out ‘due diligence’, but they would then also expect it to be conducted on a private and confidential basis.

I note that the Information Commissioner has recognised that higher education institutions operate in highly competitive markets, both the market for students and the “market” for donations. The Commissioner has also accepted that some donors may be put off from entering the donation process if they believe that their detailed information will become public.

I also believe that disclosure would be likely to deter donors from making future gifts to the College and this could also damage the College’s ongoing relationship with existing donors. This is, consequently, sufficient to engage the exemption.

In terms of the public interest test, I acknowledge the public interest in openness, transparency and accountability particularly where the raising and expenditure of funds are concerned. However, we have disclosed information about this Donor and provide additional information below, whereby it is my view that this is sufficient to meet any public interest in disclosure.

Donations are a valuable source of revenue for the College and we need to be in a position to fundraise effectively and without prejudice. It is not in the public interest to discourage future donations or hinder the College’s ability to secure future gifts with this Donor or others. Donors can easily go elsewhere. Less fundraising will have a negative impact on the services the College is able to offer its students and hinder its ability to attract students.

Therefore, in the circumstances of this case, with the exception of the information already disclosed and that disclosed now, the balance of the public interest favours maintaining the exemption.

## **Conclusions**

A feature of the decisions highlighted is that certain high level information is disclosed, where this information then goes towards satisfying any public interest/legitimate interest in disclosure. Accordingly, I would disclose this additional information:

*b) any due diligence conducted by KCL on Dr Lau*

King's has a robust policy for the acceptance of donations. Thorough due diligence is conducted on all major donations to King's College London. The Policy for the Acceptance of Donations is publicly available on the KCL website here:

<https://www.kcl.ac.uk/policyhub/donations-policy>

*d) any agreement or MoU signed in relation to this gift*

A copy of the standard terms and conditions are attached.

*g) information as to how Dr Lau's donation is held by KCL. Is it invested? Is it in an endowment?*

£1,000,000 – discretionary engagement fund, including an Institute Manager, post-doctoral positions and programme activity

£4,000,000 – endowment towards creating a Chair in Chinese International Relations

£6,000,000 – endowment to create the Lau Chinese Institute

Taking the above into account, I partially uphold your internal review, however, for the balance of information not otherwise provided, I am sorry, but I agree with the original decision.

I would also apologise again for the delay in the original response.

This completes the University's response to your internal review request.

## **Your right to complain**

In the event that you are not content with the outcome of your complaint you may apply to the Information Commissioner for a further decision.

The Information Commissioner can be contacted at the following address:

The Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow

Cheshire  
SK9 5AF

Yours sincerely



Information Compliance