

Our Reference: FOI.2023.04.169

UNIVERSITY OF
BIRMINGHAM

Legal Services

John Lubbock
What Do They Know

Director
Dr N Cárdenas Blanco
Solicitor

(By Email)

9 October 2023

Dear Mr Lubbock

Re: Your request for a review of the University's response

Further to your email of 29 August 2023, I have carried out an internal review of the University's decision to not provide any information in response to your request, relying on Section 12 of the Freedom of Information Act 2000 ("the Act") and the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulation 2004, in its response to your request for information dated 29 August 2023.

In your request dated 24 April 2023 you submitted the following request:

I am conducting a survey of UK higher educational institutions to find out which have had business dealings with the Chinese genomic sequencing company BGI Genomics.

I would like to ask whether your university has ever had any contracts or business relationships with BGI Genomics. If there has been any work undertaken by BGI Genomics with your university, please can you provide a list of these contracts with dates from and to, and a short description of what the contract was for.

The University asked for the following clarification on 25 April 2023:

In order for us to progress your request we require clarification of the information you are asking for. Please can you confirm:

- *What you mean by 'contracts or business relationships' as we need to be certain that your interpretation of the term and ours are the same. For example, do you mean research contracts or supply contracts.*
- *Additionally, what falls under your definition of business relationship?*

The University is unable to progress this request until the above clarification is received.

You provided the following clarification on 29 July 2023:

I am following up on my previous FoI because you have asked me to clarify a number of things:

"In order for us to progress your request we require clarification of the information you are asking for. Please can you confirm:

- What you mean by 'contracts or business relationships' as we need to be certain that your interpretation of the term and ours are the same. For example, do you mean research contracts or supply contracts.*
- Additionally, what falls under your definition of business relationship? "*

By 'contracts', I mean any legal agreement signed between your university and BGI Genomics or a subsidiary company thereof. This could include research agreements, agreements to supply equipment, or joint events. A business relationship means any contract in which your university has agreed to conduct joint work with a company.

For example, I have found one joint research contract funded by UKRI in which the University of Birmingham and BGI Genomics were research partners:

<https://gtr.ukri.org/projects?ref=NE%2FK011294%2F1>

This would count as a contract with BGI Genomics, and a business relationship with the company. I would therefore like to ask if there are any other contracts like this one in which the University of Birmingham has conducted joint research work or any other kind of collaborative work with BGI Genomics or any other BGI Group company.

The University responded to you on 29 August 2023. In that response the University did not provide any information in response to your request, relying on the exemption detailed in Section 12 of the Act. The University provided the following explanation in its response:

The information being requested is not held in a database that can be searched. Therefore it would be necessary to interrogate background documents to determine whether these are relevant to this request. It has been estimated that this will take in excess of 18 hours in total.

The University confirms that it holds some of the information you have requested, and that this could be extracted within 18 hours. Please note that the University only releases data for complete financial years.

If you were to submit a new request, firstly limiting the scope of the information requested to:

- a specific time period beginning no earlier than 2019, being the year in which the University changed its internal case reporting systems;*
- contracts entered into between: (1) the University; and (2) BGI Genomics and/or its named subsidiaries to be specified by you;*
- contracts the principal subject matter of which relates to the following:*

- research projects where BGI Genomics (and/or its named subsidiaries, as appropriate) was either the funder or a collaborator; and
- the supply of materials and/or equipment by the University to BGI Genomics (and/or its named subsidiaries, as appropriate)

the University considers that it would be able to respond to the request within the appropriate time limit, subject to any exemptions in the Act which might apply.

Therefore, in accordance with Section 12 of the Act and the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulation 2004, the University has not provided the information you have requested.

In your request for internal review on 29 August 2023, you stated:

I am writing to request an internal review of the handling of this Fol. Out of dozens of universities I approached with this same query, Birmingham was the only university to refuse after delaying for months by requesting clarification of obvious words like 'business relationship'. It should be possible for you to fulfil this request by looking at the internal database of contracts the university has with external companies. I am not asking for a huge exploration of external databases, and the fact that you are the only institution out of 60 or 70 that has refused my request suggests a lack of willingness to attempt to respond to this request.

I am therefore asking you to review this request and make an attempt to find any records of contracts with BGI and/or its subsidiaries.

The University's request for clarification

The University carefully considers each request for information under the Act. As per the ICO guidelines, where a request that is unclear and has more than one possible interpretation, the ICO provides the following guidance for organisations:

'You should never attempt to guess which meaning the requester actually intended. Even if you respond correctly to one possible objective reading of a request, you may still find yourself in breach of the legislation if you fail to identify an alternative interpretation which is equally valid. You must seek clarification from the requester, if there is more than one objective reading.'

(This can be read on the ICO website at: <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/interpreting-and-clarifying-requests/>.)

The University receives a high volume of requests regarding research contracts, contracts regarding studentship, donations, supply contracts of goods and supply contracts regarding services. Therefore, in order to determine which type(s) of contract you were interested in, the University asked for clarification.

The University asked for clarification the following working day that you submitted your request. The University did so following the ICO guidelines to *'contact the requester as soon as possible, but within the 20 working days to ask for clarification.'* (This can be read on the ICO website at:

[https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/interpreting-and-clarifying-requests/.](https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/interpreting-and-clarifying-requests/))

You responded to the University's request for clarification 66 working days after it was sent, on 29 July 2023. The University then processed your request, and responded on 29 August 2023.

The University's response to your request

Turning to the content of the University's response to your request, the exemption detailed in Section 12, allows an organisation to refuse to comply with a request where doing so would exceed the limit on the cost of compliance. This is to a maximum of 18 hours of staff time. This means that where a request is estimated to take staff more than 18 hours to fulfil the request, the University is allowed to rely on the exemption detailed in Section 12. I can confirm that to fulfil your request as written would take over 18 hours, for the reasons explained below.

Section 16(1) of the Act requires an organisation to '*provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.*' (This can be read on the Government's website at:

<https://www.legislation.gov.uk/ukpga/2000/36/section/16.>)

In order to provide further detail regarding the advice that the University gave you as to how to refine your request to be answerable in under the limit of the cost of compliance, I will address each of the refinement suggestions outlined to you in the University's response to your request dated 29 August 2023. The points raised in the University's response to you are in bold, and my further explanation is in normal font below each point.

- **a specific time period beginning no earlier than 2019, being the year in which the University changed its internal case reporting systems;**

The University does not have a centralised record of project partners prior to 2019. Therefore the University would be unable to comply within 18 hours to the request, specifically where you ask "I would like to ask whether your university has ever had any contracts or business relationships with BGI Genomics" (emphasis added). This is because the University would have to interrogate hundreds of hard copy files. Consequently, the University suggested you could limit the scope to a time period with a start year of 2019. This is because in 2019 the system changed, and a centralised record is now held.

- **contracts entered into between: (1) the University; and (2) BGI Genomics and/or its named subsidiaries to be specified by you;**

The University would consider a company to be a subsidiary of BGI Genomics if BGI Genomics were a shareholder in or guarantor (or equivalent) of that company. The University does not hold recorded information setting out an exhaustive register of the names of any such companies. Consequently, the University suggested that you list the specific subsidiaries that you are interested in, which the University could consider, subject to any exemptions that may apply.

- **contracts the principal subject matter of which relates to the following:**

- **research projects where BGI Genomics (and/or its named subsidiaries, as appropriate) was either the funder or a collaborator; and**
- **the supply of materials and/or equipment by the University to BGI Genomics (and/or its named subsidiaries, as appropriate)**

As detailed above, the breadth of the contracts and business relationships entered into by the University and its subsidiaries is extremely wide. Therefore, to further assist you to refine your request to be answerable within the time limit, the University suggested that you narrow your request by specific subject matter to which it can provide a substantive answer.

I have reviewed your original request, the University's response, and your request for a review, I have therefore decided to uphold the decision not to release the data being withheld.

The University remains content to consider requests which have been adequately clarified in order for you to exercise your rights under the Act, subject to the request complying with the suggestion for refinements.

If you are dissatisfied with the outcome of this internal review, you may appeal to the Information Commissioner.

Yours sincerely

Dr N Cárdenas Blanco
Director of Legal Services