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John Lubbock

By email only to: [request-977245-4e738559@whatdotheyknow.com](mailto:request-977245-4e738559@whatdotheyknow.com)

22 August 2023

Dear John Lubbock,

### **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: 364.23), I am writing to confirm that the university is upholding its original decision of 20 July 2023.

### **Your original requests**

We received your first FOIA information request (259.23) on 1 May 2023 and treated it as a request for information made under section 1(1) of the Act. The request was as follows:

*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 or its UK subsidiary MGI Tech UK. 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. I would like to clarify that I am requesting information on any contracts with BGI Genomics from 1 January 2015 to 1 May 2023.*

We received your second FOIA information request (364.23) on 23 June 2023 and treated it as a request for information made under section 1(1) of the Act. The request was as follows:

*I would like to request the details I asked for of your two SLA agreements signed with BGI Genomics - a summary of the nature and purpose of the agreement, and the date it was signed.*

*I would further like to request the publication of an explanation as to why, having signed an SLA agreement, these did not lead to any work done. As you may be aware, BGI Genomics has been accused of close connections to the Chinese state and of trying to hack NHS data. I would therefore like you to specify whether ethical concerns about the company led to the cancellation of these contracts, or if there was any other reason for it.*

## Our original responses

We provided our response to your first request (259.23) on 30 May 2023 as follows:

*KCL's Research and Fundraising department have confirmed we have not received any research grants or donations from any of the above-named company.*

*Our Research Management and Innovation Directorate have on record two studies in which an SLA was set up with a BGI subsidiary however, on both occasions no work was outsourced to BGI and the partnerships were not activated. For clarity, no income was received, no samples have been sent for analysis, no access to UK Biobank was involved and no transfers to China.*

We provided our response to your second request (364.23) on 20 July 2023 as follows:

*The university engages Section 43(2) ('Prejudice to commercial interests') in withholding this information. This is a qualified exemption and requires the consideration of a public interest test; assessing whether the balance of the public interest favours disclosing the information or maintaining the exemption. In this case we have considered that the public interest favours non-disclosure.*

*Disclosing commercial information valuable to our competitors would be likely to prejudice the interest of the College in open competition. If the College were either to reveal a summary of our projects and partnerships or the nature of our, or their, delivery, competitors would be likely to use this information to inform and modify their own future collaborative activities and partnerships and so gain a commercial advantage in what is a highly competitive marketplace. Furthermore, to disclose the requested information could harm our ability to negotiate in future partnerships with other organisations. Companies would be likely to lose confidence in King's if they believe such confidential commercial information will be disclosed for this purpose.*

*King's College recognises the need for transparency; however, this must be balanced against the public interest in allowing the organisation and third parties to protect their commercial information, and not be placed at a disadvantage in the competitive marketplace in which we operate. Section 43(2) is a prejudice-based exemption, and there is a public interest inherent in avoiding the harm specified. In this case, the College considers that the prejudice would be likely to occur. Having considered the above, we are satisfied that the public interest in maintaining the exemption outweighs the public interest in disclosure.*

## Your internal review request

On 25 July 2023, you confirmed your request for an internal review of our original decision and stated the reasons for the review as follows:

*I am writing to request an internal review of King's College London's handling of my FOI request 'King's College London and BGI Genomics'.*

*The university has refused to comply with my request for details about the nature of terminated SLAs between King's College and BGI Genomics, a controversial Chinese genomics company who have been accused of trying to hack into Genomics England. I am interested only in general terms in what the SLAs entailed, and their reason for termination, including whether they had been terminated due to ethical concerns. When I asked The University of Cambridge for a comparable follow-up, they sent us a response, which you can read here:*

*<https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whatdotheyknow.com%2F>*

[Frequeſt%2Funiſersity of cambridge and bgi%23incoming-2347021&data=05%7C01%7Cinfo-compliance%40kcl.ac.uk%7C71d345eaae4b4b4f6f0308db8d18946a%7C8370cf1416f34c16b83c724071654356%7C0%7C0%7C638258908927940967%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IjEkaWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%3Fdata=nxSKTprHr3aAlx%2BFs39%2FpxjS6y477pIIX1KVYBrSIIA%3D%3Freserved=0](https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whatdotheyknow.com%2Frequest%2Fkings_college_london_and_bgi_gen%3Fdata=05%7C01%7Cinfo-compliance%40kcl.ac.uk%7C71d345eaae4b4b4f6f0308db8d18946a%7C8370cf1416f34c16b83c724071654356%7C0%7C0%7C638258908927940967%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IjEkaWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%3Fdata=nxSKTprHr3aAlx%2BFs39%2FpxjS6y477pIIX1KVYBrSIIA%3D%3Freserved=0)

*This refusal from King's College shows a lack of transparency, and a refusal to comply with the Freedom of Information Act. There can be no commercial confidential information associated with describing in general terms what a research contract is for, and thus I am requesting an internal review, and will take this to the ICO if I have to.*

*A full history of my FOI request and all correspondence is available on the Internet at this address:*

[https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whatdotheyknow.com%2Frequest%2Fkings\\_college\\_london\\_and\\_bgi\\_gen%3Fdata=05%7C01%7Cinfo-compliance%40kcl.ac.uk%7C71d345eaae4b4b4f6f0308db8d18946a%7C8370cf1416f34c16b83c724071654356%7C0%7C0%7C638258908927940967%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IjEkaWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%3Fdata=WmSSQZhZz%2BAp%2FhkmpfC4DmykhX6jvCGnX4h7JVe7SO0%3D%3Freserved=0](https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whatdotheyknow.com%2Frequest%2Fkings_college_london_and_bgi_gen%3Fdata=05%7C01%7Cinfo-compliance%40kcl.ac.uk%7C71d345eaae4b4b4f6f0308db8d18946a%7C8370cf1416f34c16b83c724071654356%7C0%7C0%7C638258908927940967%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IjEkaWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%3Fdata=WmSSQZhZz%2BAp%2FhkmpfC4DmykhX6jvCGnX4h7JVe7SO0%3D%3Freserved=0)

## **Our review**

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

I note that the focus of your Internal Review is an alleged lack of transparency and refusal to comply with the FOIA due to the application of the exemption at section 43(2) *Commercial Interests* of the Freedom of Information Act.

Taking the points that you put forward in turn:

*This refusal from King's College shows a lack of transparency*

This point, in large, reflects general 'transparency' arguments in favour of disclosure, which were referred to in our original response i.e. this was considered in the balancing exercise carried out. I would also, in addition, suggest that the public interest has been satisfied in part by the breadth of information disclosed to you (and by extension the 'world at large') as part of the response to your first request 259.23.

*and a refusal to comply with the Freedom of Information Act.*

I cannot give any weight to this part of your argument as you are suggesting that we have not complied with our obligations under the Data Protection Act 2018. The ICO stipulates we must release information unless there is a good reason not to (<https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/guide-to-freedom-of-information/receiving-a-request/#11>). This allows us to respond to requests adequately without releasing information by engaging a reasonable exemption under the act.

As such I note that we have adequately responded to your request by engaging Section 43(2) *Commercial interests*. To reiterate, we have reached this decision because we believe

that disclosure would be likely to prejudice the commercial interests of the university. As Section 43 is a qualified exemption we were obligated to complete a public interest test, which we have carried out in your second response 364.23. I therefore maintain that we have responded to your request and have complied with our obligations under FOIA.

Other matters that I have taken into account include:

- I have to assess how the public interest test was carried out by reference to the time of the original decision and the facts then in place
- What may serve a private interest does not necessarily serve a wider public interest
- I cannot see that this matter has a widespread or significant impact on the public as claimed, rather this information relates to a more narrow area of interest

Taking the above into account, I am sorry, but I do not believe that the matters you raise add much weight to the public interest test balancing exercise and, accordingly, I do not uphold your internal review - I agree with the original decision that the public interest in maintaining the exemption outweighs the public interest in disclosure.

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

**Sandra Maurer**  
Information Compliance