



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

EA/2016/0241

ON APPEAL FROM:

The Information Commissioner's Decision No: FS50624186

Dated: 14 September 2016

Appellant: Michael Williamson

Respondent: Information Commissioner

Second Respondent: City University of London

Determined: on the papers

Date of decision: 31 August 2017

Before

**Anisa Dhanji
Judge**

Subject matter:

FOIA section 1 – whether information requested is held by the public authority.

SUBSTITUTED DECISION NOTICE

Dated: 31 August 2017

Name of Complainant: Michael Williamson

Public Authority: City University of London

Address of Public Authority: Northampton Square
London
EC1V OHB

The following Decision Notice is substituted in place of the Commissioner's Decision Notice dated 14 September 2016

The Public Authority did hold additional information coming within the scope of the request. However, since this information has now been provided to the Complainant, no further steps are required to be taken.

Signed

**Anisa Dhanji
Judge**

REASONS FOR DECISION

Introduction

1. This is an appeal by Mr Michael Williamson (the “Appellant”), against a Decision Notice issued by the Information Commissioner (the “Commissioner”), on 14 September 2016.
2. The appeal concerns a request for information made by the Appellant to City University of London (the “University”), under the Freedom of Information Act 2000 (“FOIA”), relating to its relationship with Western Union Business Solutions (UK) Ltd (“WUBS”).
3. WUBS is licensed by the Financial Conduct Authority under the Payment Services Regulations 2009, as a payment services provider. Amongst other services, WUBS facilitates international student loan payments to and/or from universities.
4. The Appellant is from the USA. At the time he requested the information, he was a student at the University. His request arose from his concern that he had been required, by the University, to make his tuition fee payments using WUBS, and that this had been financially disadvantageous to him. He believes that the University profits from such arrangements.

The Request for Information

5. On 1 February 2016, the Appellant wrote to the University and made a request for information on quite broad terms. The University asked the Appellant to narrow his request because compliance would otherwise exceed the appropriate cost limit provided for in section 12 FOIA.
6. On 2 February 2016, the Appellant submitted a more focused request, on the following terms (the “First Request”):
 - “(1) *Any form of commission/value/benefit including but not limited to money/checks/commission/fees/bonuses/gifts/payments/compensation/anything of value from your affiliation with Western Union Business Solutions provided to City since inception. Any documents that name City University as an affiliate of Western Union Business Solutions. Also I am requesting any and all pages of documentation (including signed) of the Western Union Business Solutions including brochures specifically meant from Western Union Business Solutions.*
 - (2) *I wish to view the FOI log request for the past two years regarding Western Union Business Solutions for the past 2 years.*
 - (3) *Also the number of wire transfers from City University/Western Union Business Solutions to students made: October 2015, November 2015, December 2015 and January 2016.*

- (4) *Also any notifications/announcements/emails regarding the removal/discontinuation of wire transfers to students from August 2015 - present.*
7. The University responded on 22 February 2016. It provided the Appellant with the information it held coming within the scope of point (3). It said that it did not hold information coming within the scope of points (1) and (4). In relation to point (2), the University stated that it had not received any request for information regarding Western Union Business Solutions (“WUBS”) in the past two years.
8. On 26 February 2016, the Appellant made a further request for information on the following terms (the “Second Request”):
- “(1) *The number of City/Cass students who are sponsored/funded through a local or international organisation still receiving funds via wire from Western Union? (Please separate local vs international).*
- (2) *So perhaps you could find the names of the sending institution that sent money to WU, I do not need the students names since that would be private. But the sending institute would be helpful for instance.*
- (3) *Please also provide the contract between City University and Western Union along with any documents that discuss the affiliate program, if there is one. Also copies of any checks or payments that Western Union has paid to City University and the type of relationship that City University’s and Western Union have, (if they are an affiliate, or on any types of programs, or is there no money exchanges hands at all).**
9. The University provided the information coming within the scope of point (1), but cited the exemption in section 43(2) of FOIA (prejudice to commercial interest) in relation to points (2) and (3). The University later withdrew its reliance on section 43(2), and said that in fact, it did not hold the information.

The Complaint to the Commissioner

10. The Appellant complained to the Commissioner.
11. The Commissioner contacted the Appellant to clarify the scope of his complaint. In the absence of a written explanation from the Appellant, the Commissioner informed the Appellant that she would investigate whether the University held information coming within the scope of point (1) of Request 1, and point (3) of Request 2. The Appellant did not dispute the Commissioner’s understanding of the scope of his complaint.
12. It is clear from the Commissioner’s e mail correspondence which followed, that the Appellant’s key interest was in information relating to any contractual arrangement between the University and WUBS. The Appellant explained why he believed that a contract existed between the University and WUBS. He referred the Commissioner, in particular, to a statement on the University’s website, referring to the University having “partnered” with WUBS to allow students to send bank transfers from overseas securely in their own local currency, and to a service agreement available on WUBS’ website (the “Service Agreement”).
13. The Commissioner considered this information and also carried out further searches on the University’s website. She noted that the University’s website

also carried a statement that the University had “contracted with” WUBS to provide students with a simple and low-cost method to pay fees to the University in their own currency.

14. The Commissioner sought clarification from the University, on a number of occasions. The University said that the Service Agreement on WUBS’ website applied to its relationship with WUBS. It said, however, that it did not hold this information, and also that it held no supporting documents relating to the Service Agreement. The University confirmed that no other contract existed between the University and WUBS, and that it receives no commission or other payment from WUBS.
15. In her Decision Notice, the Commissioner noted that the question of whether a public authority holds any information must be decided on a balance of probabilities. In the absence of any evidence to the contrary, she was satisfied that the University did not hold information coming within the scope of point (1) of Request 1, and point (3) of Request 2.

The Appeal to the Tribunal

16. The Appellant appealed to the Tribunal against the Decision Notice. The Tribunal’s Registrar joined the University as a party to the appeal.
17. In his grounds of appeal, the Appellant seeks, amongst other things, compensation for the financial loss he says he has suffered. Such compensation claims do not come within the jurisdiction of this Tribunal. As the Commissioner has already explained to the Appellant, there may be other regulators who the Appellant can turn to for such remedies.
18. All parties requested that the appeal be determined on the papers without an oral hearing. Having regard to the nature of the issues raised, and the nature of the evidence, I am satisfied that the appeal can properly be determined without an oral hearing.
19. I have considered all the documents and written submissions received from the parties (even if not specifically referred to in this decision), including, in particular, the documents contained in the agreed bundle of documents.
20. This decision has been made by one judge, pursuant to paragraph 11(2) of Practice Statement 11.

The Tribunal’s Jurisdiction

21. The Tribunal’s jurisdiction in dealing with an appeal from a Decision Notice is set out in section 58(1) of FOIA. If the Tribunal considers that a Decision Notice is not in accordance with the law, or to the extent that the Decision Notice involved an exercise of discretion by the Commissioner, if the Tribunal considers that he ought to have exercised the discretion differently, the Tribunal must allow the appeal or substitute such other notice as could have been served by the Commissioner. Otherwise, the Tribunal must dismiss the appeal.
22. Section 58(2) confirms that on an appeal, the Tribunal may review any finding of fact on which the notice is based. In other words, the Tribunal may make different findings of fact from those made by the Commissioner, and indeed, the Tribunal will often receive evidence that was not before the Commissioner.

Statutory Framework

23. Under section 1(1)(b) of FOIA, a person who has made a request for information to a public authority is entitled to be provided with the information, if the public authority holds it.
24. The duty on a public authority to provide the information requested does not arise if the information sought is exempt under Part II of FOIA. No exemptions are now being relied upon by the University.

Issue

25. The only issue in this appeal is whether the University holds the relevant information.

Evidence and Submissions

26. In the Appellant's grounds of appeal, he maintains that there must be an agreement between the University and WUBS. He refers to the information on the University's website (see para 12 and 13, above). He also says that WUBS informed him that the University had a "client account manager". He says that if there is an account, there must be terms and conditions. He also says that the University uses WUBS on average about 100 times a month for student wire transfers. He reiterates that in these circumstances, there must be an agreement between them. He also sets out in some detail the loss he suffered by using WUBS and how that loss arose. He challenges the University's claim that WUBS charges are competitive, and reiterates his belief that the University receives a financial incentive for requiring students to use WUBS.
27. In addition to his grounds of appeal, the Appellant has provided a significant amount of further evidence and submissions, including in particular, in his e mails (with various attachments), dated 27 October 2016, 12 November 2016, and 29 January 2017. One of the attachments is a letter from WUBS dated 8 March 2016 which refers to their "agreement" with the University, but which they said they could not disclose to the Appellant.
28. He has also sent an e mail reproduced at page 90 *et seq* in the bundle which is undated, but which other references suggest was sent on 21 February 2017. In it, the Appellant says, amongst other things, that his loan disclosure documents state that WUBS is a third-party agent. He argues that if WUBS is acting on behalf of the University, there must be an agreement in place.
29. He also attaches further communications he had had with WUBS, including a letter from them dated 10 February 2017 stating that "...our agreement in relation to the rates applied is set with City University London", but declining to provide him the precise terms of the "trading agreement" because he was a "third party".
30. In addition, the Appellant has provided a letter from WUBS dated 15 February 2017 which states, amongst other things that the Service Agreement does not apply to the "US Direct Loan Service" which related to the Appellant's funding.
31. In her Response dated 11 November 2016, to the Appellant's grounds of Appeal, the Commissioner reiterates her view, based on the information available to her as at the date of her Decision Notice, and on a balance of probabilities, that the University did not hold the information in issue.

32. The University's Response dated 16 December 2016 adopts the Commissioner's position. In response to the Appellant's grounds of appeal, it reiterates that the references to "contracted with" and "partnered" on its website refer simply to the fact that WUBS provides services to the University. It also says that the reference by WUBS to the University having a "client account manager" does not mean that the University has a contract in place with WUBS. It reiterates that services are provided by WUBS on the terms and conditions set out in the Service Agreement on WUBS' website and notified to the Appellant on 18 July 2016, and that there are no other agreements in place between the University and WUBS. It also reiterates that the University does not receive any commission or rebates from WUBS.
33. Later, the University submitted a witness statement of Mr Suriyakumar Araniyasundaran, signed and dated 15 March 2017. It has 24 exhibits although unfortunately the exhibits themselves are not numbered. Mr Araniyasundaran says that he is the Head of Financial Services and Procurement at the University. He gives no indication as to how long he has held the position. He says that the purpose of the witness statement is to explain the steps taken by the University to locate the information requested by the Appellant, and also to address the information provided by the Appellant in his submissions dated 21 February 2017 (see para 28 above).
34. He says, in brief, that the Appellant's requests were received by the University's Information Compliance Team, and in accordance with its usual procedure, the requests were considered and directed to the relevant departments. In this case, the relevant department was the Finance Department which includes the Procurement Team. Mr Araniyasundaran says that as Head of Financial Services and Procurement, he was involved in handling the requests.
35. He then summarises the various enquiries that were made internally. He confirms that he told the University's Information Compliance Team that the University had an account with WUBS and an account manager, but that he was not aware of any written contract with WUBS. He also informed them that the University had no written agreement in place with WUBS, save for the Service Agreement, and that WUBS simply collected fees from international students on behalf of the University and credited the University's bank account with the University receiving no commission or rebate from WUBS. It was on this basis that the University wrote to the Appellant and the Commissioner confirming that the University had no contract with WUBS other than the Service Agreement.
36. As to why the University's website stated that "City University London has contracted with Western Union Business Solutions" he says that is simply because WUBS provides services to the University.
37. He then outlines the enquiries that were made by the Finance Department with WUBS. He says that on 23 November 2016, WUBS sent the University a copy of an application form, and terms and conditions which were entered into in 2009 between the University and Travelex, which he says is now part of Western Union (the Travelex Application Form"). He says that at the time, he did not consider that the Travelex Application Form was relevant to the appeal as he understood that it applied only in relation to the making of foreign currency payment, not to WUBS accepting and processing incoming funds destined for the University. He understood, in any event, that these terms and conditions had been superseded by the Service Agreement.

Because of this, the University did not disclose the Travelex Application Form to the Appellant.

38. He says that the Appellant's submissions dated 21 February 2017 raised new arguments. In particular, the Appellant stated that he had been informed by WUBS that that the Service Agreement was not relevant to his situation, and WUBS referred to another set of terms and conditions. Mr Araniyasundaran says that at this point, he contacted WUBS to ask what contract it was referring to in its correspondence with the Appellant, and WUBS confirmed that it was referring to the Travelex Application Form.
39. Mr Araniyasundaran says that he then made a number of further enquiries with WUBS and they confirmed that the Travelex Application Form set out the terms and conditions in place between WUBS and the University. These are attached as exhibit 23 to his witness statement. Mr Araniyasundaran maintains that the University did not hold this information at the time of the Appellant's requests.
40. He says that WUBS also explained that the Travelex Application Form had been superseded by a further set of terms and conditions. Mr Araniyasundaran says that he did not know about this until 1 March 2017. He attaches them as exhibit 24 to his witness statement, but says that this document, too, was not held by the University at the time of the Appellant's requests, nor indeed did they apply at the time the Appellant used the services of WUBS to make payment to the University.
41. He says that WUBS have confirmed that the terms and conditions in the Service Agreement are not in fact relevant to the loan service provided by WUBS to students of the University, and therefore these are not within the scope of the Appellant's request.
42. He points out that none of the terms and conditions coming within the scope of the request which have been disclosed as exhibits to his witness statement include any provision for rebate or commission payments from WUBS to the University, and that none are payable.
43. The Appellant has responded to this witness statement. There is no date on his response, but it is reproduced at pages 109 *et seq* of the bundle. It is detailed and lengthy. Not all of it is relevant to the issue in this appeal. To the extent it is, he takes issue with why the University did not hold the relevant information, why it did not provide to him sooner what it obtained from WUBS in November 2016, and why it did not contact WUBS sooner. He considers that the University did hold the documents that it has now produced, and that it had attempted to conceal them. He questions how the University could not know that having an account that deals with money, an account manager, service conditions, definitions, authorisation, dates and signatures is a "legal agreement". He also says that the University should not have withheld information that it considered was not relevant as the witness statement indicates it did, because he had asked for "all" information within the scope of his requests. He is also critical of the fact that the University did not recognise that there had been updates to its contractual terms with WUBS.
44. The University has provided a Second Response, dated 24 May 2017. It rejects the suggestion that it attempted to conceal any information. It reiterates that upon receiving the requests, it carried out comprehensive searches and made inquiries of all relevant staff. It reiterates that when it received the requests, it did not hold any information relevant to the requests.

It further reiterates that when it received the Travelex Application Form from WUBS, it did not regard this as relevant to the Appellant's requests. Once the University became aware that there were updated terms and conditions relating to WUBS' loan services, it provided these to the Appellant. It has now provided the Appellant with all the information it holds within the scope of his request. It reiterates that it does not receive any commission or fees from WUBS, and therefore no information relating to such matters exists.

45. With its Second Response, the University has submitted a letter from WUBS dated 23 May 2017. This sets out the inquiries that the University had made with WUBS from February 2016, and the information WUBS had provided to the University as to the contractual arrangements between WUBS and the University. WUBS explains that the University is its client, and that WUBS makes payment of international student loans to its international students. It further explains that WUBS contracts with and provides its services, at all times, only to the University. In the case of US students like the Appellant, student loans are initially paid to the relevant university, which in turn pays it to the student. The University receives no rebate, commission or other payment from WUBS in relation to the US loan service. It further says that on 27 February 2017, WUBS sent to the University, the terms and conditions that the University had agreed to be bound by. It says that they have been amended several times since the University agreed to be bound by them and the latest version can be accessed from the WUBS' website following the link set out in its letter.

Findings

46. The obligation on a public authority under FOIA to communicate the information requested applies only to the extent that the public authority holds the information. It is, of course, a fact of life that some public authorities have good records management policies and some do not. FOIA imposes no obligations and offers no remedies in the case of poor record-keeping practices of a public authority. As Judge Wikley stated in **Metropolitan Police v Information Commissioner and McKenzie [2014] UKUT 479 (AAC)**, FOIA "is not a statute that proscribes any particular organisational structure or record-keeping practice in public authorities". This is the case even where the public authority is subject to record-keeping obligations imposed by another statute, as was the case in **Cruelty Free International v Information Commissioner [2017] UKUT 318 (AAC)**.
47. However, while poor record-keeping is not itself a breach of FOIA, it is implicit in the obligation on a public authority to provide the information that it holds, that an assertion that it does not hold the requested information must be made responsibly and only after a proper search. The Commissioner's guidance on "Determining whether information is held" says that when investigating whether a public authority holds information, it will look at whether the public authority has conducted sufficient searches for the information.
48. I find that the public authority in this case has fallen short in its approach to determining whether the information requested was held. It was patently incorrect for the University to have said that there was no contract between itself and WUBS.
49. I find it concerning that the University invoked section 43 without first establishing whether it held any information to which the exemption could properly apply. Its position that if it held any information, it would have come

within the scope of the exemption in section 43 is clearly misguided. Before invoking it, the public authority would have to carefully consider the contents of the information to see whether section 43 was engaged at all, and then apply the public interest test.

50. It is surprising that the University was prepared, so readily, to dismiss the possibility of there being a contractual arrangement to underpin the services that WUBS was providing to it. The references on the University's own website to having "partnered" with WUBS and having "contracted with" WUBS should, at the very least, have prompted inquiry into the basis of those statements, and when and by whom those statements were made, before stating, as the University did, that it meant nothing more than that WUBS was providing services to the University. It is difficult to see how "contracted with" could have that meaning.
51. It is also surprising that the University did not even acknowledge the existence of the Service Agreement, nor make any enquiries with WUBS, until confronted with the information that the Appellant had himself obtained from WUBS and its website, during the course of the Commissioner's inquiries.
52. I agree with the Appellant that the explanation provided by Mr Araniyasundaran in his witness statement at paragraph 23, to the effect that the University did not provide the Appellant with the Travelex Application Form when it received it from WUBS on 23 November 2016 because it was not considered to be relevant to the appeal, reflects a misunderstanding by the University of its obligations under FOIA. The request was not limited to any specific type of contract and the University was not entitled to withhold it because of its view as to what the Appellant wanted.
53. The University argues that the information now provided to the Appellant by way of exhibits to Mr Araniyasundaran's witness statement was not, in any event, held by it as at the date of the Appellant's request.
54. As the Commissioner has noted, where there is a dispute about whether a public authority holds the requested information, that is an issue to be resolved on a balance of probabilities.
55. I find it unlikely that the University would not have held, at a minimum, the Travelex Application Form, a document which was signed in 2009 by the then Director of Finance whose signature and e-mail address appears on the form, along with the names, positions, e-mail addresses, and signatures of four members of staff at the University which appear under the heading "Staff Authorised to Create and/or Approve Orders". Mr Araniyasundaran says, at paragraph 8 of his witness statement, that he and other members of staff within the Finance Department carried out searches of their records and made enquiries of all relevant staff that might be privy to any such arrangement or documentation. There is no mention as to whether the members of staff whose names appear were approached. Even if some or all of them are no longer employed by the University (and it has not been suggested that this is the case), I find it unlikely that a document of sufficient significance as to have been signed by the Director of Finance and four members of staff would not have been retained by the University.
56. I find, in short, on a balance of probabilities, that at the minimum, the University held the Travelex Application Form as at the date of the request, and in failing to provide it to the Appellant, the University was in breach of section 1(1)(b) of FOIA.

57. I also find, having reviewed all the papers before me, and on a balance of probabilities, that the University holds no information relating to any commission or other payments by WUBS to the University. I find it likely that this is because no such amounts are paid, nor payable.
58. The Appellant's frustration is understandable. However, I find nothing on the evidence to support the Appellant's assertion that the University deliberately concealed information from him. The evidence indicates that the failings by the University were due to a lack of diligence, rather than deliberate dishonesty.

Decision

59. This appeal is allowed to the extent set out above. However, since the information has now been provided to the Appellant, no further steps are required.

Signed

Date: 31 August 2017

Promulgated: 7 September 2017

**Anisa Dhanji
Judge**