



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Appeal Reference: EA/2016/0243**

**Heard at Cambridge County Court  
On 15<sup>th</sup>. February, 2017**

**Before**

**DAVID FARRER Q.C.**

**Judge**

**and**

**HENRY FITZHUGH**

**Tribunal Member**

**Between**

**ALEXANDER JACKSON**

Appellant

**and**

**THE INFORMATION COMMISSIONER (“THE ICO”)**

Respondent

## DECISION AND REASONS

1. The intended third member of this panel was absent from the hearing of this appeal. The Tribunal obtained the consent of both parties to proceeding with the two members named above. This is the decision of those two members.
2. We allow this appeal for the reasons given below. The requested information must be provided to the Appellant within twenty – eight days.
3. Mr. Jackson studied at the University of the Arts, London (“UAL”). He is now in dispute with UAL but the nature and merits of that dispute are no concern of this Tribunal.
4. On 19<sup>th</sup>. October, 2015 Mr. Jackson made a series of twenty - six related requests for information to UAL. This appeal is concerned with only three of them (“the disputed information”), namely –
  - “19        *What academic qualifications did Paul Bevan have in the field of photography, fashion or fashion photography prior to 2012?*
  - 20        *What academic or non – academic qualifications did the Academic Registrar, Stephen Marshall have prior to 2012 and in what field/area of study?*
  - 21        *What academic or non – academic qualifications did Head of Study Support, Diana Aronstam have prior to 2012 and in what field/area of study?”*Paul Bevan, like the other two named individuals, was, at the date of the request, a member of the academic/teaching staff at UAL. Diana Aronstam died shortly after the request was made and UAL agreed to provide the requested information in respect of her shortly before the hearing. Nevertheless, this Decision embraces request 21.
5. In its response of 18<sup>th</sup>. November, 2015 UAL admitted that it held the disputed information but refused disclosure, citing the exemption in FOIA s.40(2). It asserted

that such information was in each case the personal data of the identified individual and that disclosure would be unfair to that individual and would therefore amount to a breach of the First Data Protection Principle (“the FDPP”). It maintained that position following an internal review.

6. Mr. Jackson complained to the ICO as to the withholding of the disputed information and of other information covered by requests 1 – 5 and 22.
7. In her Decision Notice (“the DN”) dated 24<sup>th</sup>. August, 2016, the ICO upheld UAL’s reliance on s.40(2) as regards the disputed information. She found that it was the personal data of the three data subjects, She accepted the submission of UAL, in its response to the complaint dated 21<sup>st</sup>. March, 2016, that teaching staff do not provide details of their academic and non – academic qualifications to the University in the expectation that such information will be provided to members of the public who may ask for it and that an expectation of security and confidentiality was reasonable in the circumstances.
8. As to compliance with Condition 6(1) of Schedule 2 to the DPA 1998, she found that there was a general public interest in the transparency and accountability of public organisations but did not consider that it extended to the disclosure of academic qualifications requested here, “*especially in light of the extremely detailed and personal nature of (the disputed information)*”. She further concluded that the requests had been sufficiently met by the provision of the relevant job specifications to Mr. Jackson during her investigation.
9. Mr. Jackson appealed to the Tribunal
10. So far as relevant to the Tribunal’s task, his grounds of appeal, which were developed in a Reply, a subsequent skeleton argument and in oral submissions, were that –

- Potential students and the general public had a legitimate interest in knowing the academic qualifications of university teachers;
- That interest included information as to their qualifications at an earlier date when they were teaching;
- UAL had provided similar information in response to similar requests for information.
- UAL did not ask the data subjects whether they consented to disclosure
- Job specifications do not meet the requests.

11. The ICO responded by reiterating and developing the points made in the DN. She evidently considered that s.40(2) was rightly relied on regardless of the references to 2012 in the requests. although that refinement made the case for withholding the information all the clearer. She accepted that the provision of the job specifications met the legitimate interest in the qualifications of the data subjects so that disclosure of the requested details of their qualifications was not necessary. There was no suggestion here of malpractice in their appointment nor of inadequate performance of their academic duties.

12. The DN required UAL to provide information as to the identity of a further member of staff (request 22) and upheld UAL's reliance on s.12 in refusing further information sought in requests 1 – 5. This decision is not concerned with any of those issues.

13. The statutory framework relevant to Section 40(2) is quite complex but the route to decision in this case, as in most, has been the subject of authoritative guidance<sup>1</sup> and is quite clear –

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1 Farrand v Information Commissioner [2014] UKUT 310 (AAC) §20.  
Foster and Rodriguez – Noza v Information Commissioner and Nursing and Midwifery Council [2015]UKUT 0449 (AAC)<sup>1</sup>

- (i) Is the disputed information the personal data of third parties? It is agreed here that it is.
- (ii) Would disclosure to a member of the public other than under FOIA breach any of the data protection principles? (s.40(3)(a)(i)).
- (iii) Having regard to the FDPP, would disclosure be fair and would it, in particular, meet at least one Schedule 2 condition? (Schedule 1 to the DPA 1998, Part 1, §1(a),)
- (iv) As to that particular requirement, would disclosure satisfy condition 6(1) of Schedule 2 to the DPA, 1998?

14. Condition 6(1) reads -

*"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject"*.  
As in the vast majority of cases that come before the Tribunal, this is the only condition which the requester could hope to satisfy.

15. As regards the scope of the requests, the Tribunal finds that the qualifications requested were limited to those obtained from the time that the named individuals commenced higher education. They did not include public examinations taken at school. That is plainly to be inferred from the context, namely the content of Mr. Jackson's letter and the fact that he was a former student of UAL who was raising issues as to the adequacy of UAL teaching of subjects which he had studied, including the handling of disability.
16. The Tribunal proceeds to the determination of issue (iii). We consider first whether disclosure would, for whatever reason, be unfair. We shall then deal with the specific requirement relating to condition 6(1).

17. UAL says that it would be unfair because staff were appointed on the assumption, hence in the expectation, that their academic qualifications would remain confidential, though we have seen no contractual or other documents to support this claim. The inclusion of a reference to their qualifications in 2012 is said to intrude still further into their private lives. In finding unfairness, the ICO went so far as to speak of the extremely personal and detailed nature of the disputed information, as quoted in §7.
18. We strongly disagree with such a finding. If UAL fostered such expectations in those appointed, it was unwise to do so. We consider that any teacher in higher education should expect his/her qualifications to be open to public scrutiny. A student considering an application for enrolment is entitled to know the calibre and breadth of scholarship of his/her potential teachers, as evidenced by the degrees and appointments that they have held and the books and papers that they have produced or to which they have contributed. So is the taxpayer or any concerned member of the public. Indeed, our impression is that competitive institutions of higher education are generally keen to publicise the CVs of their academic staff for that very purpose. We find it hard to envisage a case where an institution for higher education would be justified in withholding such data or where an expectation of confidentiality would be reasonable. No doubt there are exceptions to every rule but this case does not provide one.
19. We find the ICO's assessment that disclosure might cause distress very surprising and note that it was not based on any evidence from any source. We think it likely that most holders of academic posts regard these personal data as public property and that the only cause of distress would be exposure of bogus or wholly inadequate qualifications, which is plainly not contemplated here. If it were, then the public interest in disclosure would be not simply legitimate but overwhelming and nobody

could hold a reasonable expectation that such a state of affairs could remain confidential.

20. We do not consider that the linking of the requests to 2012 weakens the case for disclosure and firmly reject the ICO's description of them quoted at §§7 and 16 . If the data subjects held in 2012 the positions that they occupied at the date of the requests, the public was entitled to know whether they were already armed with the appropriate qualifications. Indeed, although the requests did not ask for the dates on which these qualifications were awarded, we see nothing intrusive or excessive in disclosure of the dates when they were obtained.

21. We do not regard job specifications as adequate substitutes for information as to qualifications. From a positive standpoint, the appointee may have more advanced or distinguished qualifications than the role demanded. From the negative, the appointment may have gone to one whose CV did not, for whatever reason, match the posted requirements. In any event, the specific awards and the institution that made them may tell a candidate or an informed member of the public significantly more than a standardised series of academic and administrative prescriptions. Having regard to our findings as to the provision of specific academic qualifications, there is no justification for fobbing off Mr. Jackson with this substitute information anyway.

22. Mr. Jackson stated that UAL had provided such information in answer to other requests. UAL responded that it was unaware of having done so. We make no finding on the matter, having regard to our findings on the general issue of confidentiality in this context.

23. The foregoing findings are a clear pointer to our decision as to compliance with condition 6(1) of Schedule 2 to the DPA, 1998, hence as to whether disclosure would breach the FDPP.

24. Mr. Jackson, as a former student had a legitimate interest in knowing the academic qualifications of those who taught him, when they taught him. Equally, the general public was entitled to know what qualifications were held by academic staff who taught those in receipt of student loans in an institution which was partly maintained by public funds. Whichever test was appropriate, it was satisfied.
25. Such an interest could only be satisfied by disclosure of the disputed data. Disclosure was therefore necessary.
26. We see little, if any prejudice to the legitimate interests of the data subjects resulting from disclosure, which is, therefore, in no way unwarranted.
27. For these reasons we allow this appeal and order that the disputed information be provided within twenty – eight days of the publication of this decision. We conclude with observations on two issues which were raised but do not affect our decision.
28. The facts, if such they are, that Mr. Jackson is in dispute with UAL, that there is the possibility of future litigation and that his motive for seeking disclosure may be linked to such a prospect are immaterial. The Tribunal assesses his entitlement to disclosure by reference to the tests identified above. Whether the relevant documents would be disclosable in such litigation has no bearing on our decision. The test is entirely different as is the requirement in any litigation for confidentiality on the part of the party to whom disclosure is made.
29. A substantial proportion of the documentation produced by Mr. Jackson right up to the eve of the hearing related to his complaints as to the way in which the DN had been prepared and presented. The Tribunal determines the appeal by way of rehearing. It is not reviewing the exercise by the ICO of her powers of investigation and decision. It is not concerned with the origin of a particular argument, whether it



be the public authority or the ICO, only with whether such an argument is well – founded.

30. Not for the first time, the Tribunal must stress that it is not the Divisional Court, exercising powers of judicial review and arguments designed to impugn the rationality of the DN do not assist it. Of course, refuting an argument which has led to the dismissal of a complaint to the ICO is an essential element in any appeal but the focus is quite different.

31. Resort to judicial review of a DN can hardly ever be appropriate since the Tribunal can reverse a decision of the ICO following a rehearing. In this case Mr. Jackson sought from the Registrar a lengthy adjournment of this appeal so that he could first launch a judicial review. Quite rightly, she refused it. It is probable that any future application for such an adjournment would meet with the same result.

32. If we are to achieve the overriding objective of fair, prompt and cost – effective appeals, it is important that litigants have regard to our limited function and the correspondingly focussed evidence and arguments which may be relevant to its discharge.

signed

David Farrer Q.C.

Judge of the First-Tier tribunal

Date: 22<sup>nd</sup>. February, 2017  
Promulgation date: 3 March 2017