

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 July 2015

Public Authority: The Governing Body of the University of Bournemouth

Address: Fern Barrow
Talbot Campus
Poole
Dorset
BH12 5BB

Decision (including any steps ordered)

1. The complainant has requested copies of the complaints received by the University of Bournemouth (the University) between April 2012 and September 2013 from students and any third parties in relation to University employees. The complainant clarified that he was seeking the original wording of the complaints, albeit he confirmed that any personal data could be redacted. The University considered that the complaint information was exempt from disclosure under sections 36(2)(c) (prejudice to the effective conduct of public affairs), 40(2) (third party personal data), and 41 (information provided in confidence) and further found that it was not possible to redact the personal data contained within the information without rendering it meaningless. The Commissioner has decided that because of the way the personal data was embedded the University was not obliged under FOIA to disclose an anonymised version of the complaint information. He does not therefore require any steps to be taken as a result of this notice.

Request and response

2. On 27 November 2014 the complainant wrote to the University and made the following request for information:

I would be grateful if you could provide to me a copy of all complaints received between April 2012 and September 2013 from students in relation to University employees.

Please note that I am happy to receive copies of the complaints which have the complainants' identity and contact details redacted and the member of staff's identity.

3. The complaint clarified later the same day that the dates specified were inclusive and that the University should not include IT or Estates complaints. On 4 December 2014 the complainant contacted the University again to ask that it include complaints 'from any third party' as well as complaints from students.
4. The University responded on 24 December 2014 and confirmed that it held information covered by the scope of the clarified request. However, the University considered it was not under a duty to disclose the requested information as it was exempt under sections 40(2) (third party personal data), section 41 (information provided in confidence) and 44 (statutory prohibitions) of FOIA. The University further advised that it was reserving its right to rely on section 36(2)(c) (prejudice to the effective conduct of public affairs) as a further ground for refusing the request; explaining that in accordance with section 17(2) of FOIA it was extending the deadline for responding in relation to the exemption pending the completion of the exercise of the public interest test. The University subsequently wrote on 15 January 2015 to confirm that the public interest had been considered and on balance it had been found that the public interest favoured maintaining the exemption.
5. The complainant wrote to the University on 16 January 2015 and asked it to carry out an internal review into its handling of the request, arguing that the exemptions would not apply if the information was redacted correctly. This was completed and the University provided the outcome on 9 March 2015.
6. The reviewer considered the possibility of redacting personal data in order to facilitate the disclosure of the remainder of the complaint information. However, he found that this would not be practical because of the way the personal data was embedded within the information. With regard to the exemptions cited to withhold the requested information, the reviewer decided that section 44 did not apply but upheld the University's reliance on sections 36(2)(c), 40(2) and 41 of FOIA. The reviewer did though advise that subject to the usual cost limits, the University would be able to disclose upon request a high-level anonymised summary and statistical data about the number and nature of the complaints received.

Scope of the case

7. The complainant contacted the Commissioner on 19 March 2015 to complain about the University's handling of his request for complaint information.
8. The complainant does not dispute that any data identifying an individual should be redacted. However, he disagrees with the University that it is not possible to provide an anonymised version of the complaint information. In this regard the complainant has confirmed that he is seeking the contents of the complaints as they were originally received by the University and not a summary of the complaints.
9. During the course of the Commissioner's investigation it became apparent that a part of the withheld information was the complainant's personal data. Insofar as requested information represents the applicant's personal data, an organisation should treat this as a subject-access request made under section 7 of the Data Protection Act 1998 (DPA) rather than under FOIA (which by virtue of section 40(1) provides an automatic exemption to first-party personal data).
10. The complainant's personal data has therefore been excluded from consideration as part of this decision notice and the Commissioner understands that the University has responded separately to a request for this information under the DPA.

Reasons for decision

Anonymisation of information

11. It is common ground that the rights of an individual to privacy are vital. Therefore, any decision that could impact on the privacy of an individual should be taken with great sensitivity. With regard specifically to complaints information, the Commissioner has previously accepted that disclosure would not be appropriate because of the importance that a complainant may place on confidentiality when coming forward with his or her concerns. In the Commissioner's experience, sections 40(2) and 41 are the exemptions that are most likely to apply in these circumstances.
12. In essence, a tension exists between FOIA's promotion of transparency and the need to safeguard personal information. Attentive to this tension, the complainant has agreed that the personal data contained within the complaint records can be redacted. The first question for the

Commissioner is therefore whether the requested information can be anonymised.

13. Where it is not possible to identify the subject of information from the material to be disclosed, either on its own or together with other information available to the general public, it is no longer necessary to consider the section 41 test of confidence. This is because there can be no expectation of confidentiality. Equally, if the redaction of personal data is possible, it would follow that section 40(2) falls away because there is no personal data to protect. In this eventuality, the Commissioner would then be required whether under section 36(2)(c) there was an operational reason for withholding the requested information.
14. The test of whether information is truly anonymised is if, on the balance of probabilities, a member of the public can identify individuals by cross-referencing the 'anonymised' data with information accessible to a member of the public. The University has also been guided by the Redaction Toolkit¹ published by the National Archives. The principle of redaction set out at paragraph 4.3 of the Toolkit states that "If so much information has to be withheld that a document becomes nonsensical, the entire document should be withheld." This test will also inform the Commissioner's determination of whether it would be appropriate for the University provide a redacted version of the complaint information.
15. Perhaps the most familiar example of a situation in which an individual can be identified from information is where a record contains the name of that individual, although even here there will be occasions when some additional contextual information will be required to distinguish, say, one 'John Smith' from another. However, even in the absence of a name, it is conceivable that a person could still be recognised from the information because of a reference to a particular characteristic that would enable someone to link the information back to them.
16. Establishing whether information is truly anonymised is therefore not necessarily straightforward; something acknowledged in the Anonymisation code of practice² produced by the Commissioner. Under the heading 'Freedom of Information and personal data' the Commissioner says:

¹ http://www.nationalarchives.gov.uk/documents/information-management/redaction_toolkit.pdf

² <https://ico.org.uk/media/for-organisations/documents/1061/anonymisation-code.pdf>

The test in FOIA can be particularly difficult to apply in practice because different members of the public may have different degrees of access to the 'other information' needed for re-identification to take place. However, a motivated intruder test can go some way towards addressing this problem.

It is good practice to try to look at identification 'in the round', ie all organisations disclosing anonymised data should assess whether any organisation or member of the public could identify any individual from the data being released – either in itself or in combination with other available information. The risk involved will vary according to the local data environment and particularly who has access to information.

17. As referenced, a test used by both the Commissioner and the Information Tribunal in borderline cases is to assess whether a 'motivated intruder' would be able to identify an individual if he or she was intent on doing so. The motivated intruder is described as a person who will take all reasonable steps to identify the individual or individuals but begins without any prior knowledge. In essence, the test is designed to encourage the holder of the information to consider in more depth the risk of re-identification in relation to information that, at first glance, appears truly anonymised. Importantly, the Data Protection Act 1998 (DPA), which defines and legislates for the processing of personal data, is concerned with information that identifies an individual. According to the Anonymisation code of practice, this implies a degree of certainty that information is about one person and not another and involves more than simply making an educated guess.
18. The code of practice also recognises that re-identification problems can arise where someone already knows a great deal about another individual, for example a family member. The code observes that these individuals may be able to determine that anonymised data relates to a particular individual, even though an 'ordinary' member of the public would not be able to do this. However, the code also considers that the privacy risk posed could, in reality, be low where one individual would already require access to so much information about the other individual for re-identification to take place.
19. Taking into account the principles set out in the Anonymisation code of practice and the Redaction Toolkit, the Commissioner has considered whether a consistent approach to the redaction of personal data could be adopted that would permit the disclosure of information that retained some significance.
20. The withheld information itself comprises a number of separate complaints. As might be expected, the complaints do not follow a standard form or share a common theme. However, the complaint

descriptions do in many cases provide detailed contextual information about the person making the complaint and the person being complained about.

21. Annex 3 of the Commissioner's Anonymisation code of practice provides some practical examples of anonymisation techniques. The first of the examples refers to the removal of variables. The code describes this process as follows: *"A variable is a characteristic or attribute of an individual – for each individual the variable will have a value [...]. The simplest method of anonymisation is the removal of variables which provide direct or indirect identifiers from the data file. These need not necessarily be names; a variable should be removed when it is highly identifying in the context of the data and no other protection methods can be applied."*
22. As stated then, context will be all important when considering if and how information can be anonymised. In this case the way the request is phrased means that an applicant will already have some knowledge about the parameters of the information. 1) It is complaint information. 2) The recorded complaint will relate to a University employee (not including IT or Estates complaints). 3) The complaint will have been received by the University at some point between April 2012 and September 2013 inclusive. It is clear therefore that the question of anonymisation cannot be considered in a vacuum but must take into account that a motivated intruder would have a frame of reference when attempting to identify an individual from the information using the other research tools at his or her disposal.
23. To test the University's position, the Commissioner has had sight of the disputed information and carried out his own redaction exercise on a sample of the complaints records. This was an incremental process, with the Commissioner beginning by redacting direct identifiers such as names before deciding whether the redaction of indirect identifiers would be required in order to truly anonymise the information. A pertinent factor in this regard was the complainant's clarification that he was not seeking a summary of the complaints but instead required the release of the complaint in its original form and the date it was received, albeit with any personal data redacted. This made the process of removing an individual's 'fingerprints' from the information more difficult.
24. The Commissioner has found that the complaint records contain a number of direct and indirect identifiers and agrees with the University that in some cases they include a "great deal of background information and details of specific events and conversations." Consequently, information that could lead to the identification of an individual is distributed throughout these records. It is the Commissioner's view that

the way the identifiers are embedded within the information prevents an appropriate balance being struck that would allow for the proper protection of personal data on the one hand while permitting the disclosure of meaningful information on the other. In other words, the Commissioner considers that the redaction of the personal data, including both direct *and* indirect identifiers, would strip the information of any material value.

25. The Commissioner has therefore accepted the University's argument that it could not provide an anonymised version of the requested information and does not require the University to take any steps to ensure compliance with FOIA.
26. In coming to this determination, the Commissioner notes that during the investigation he provided the complainant with his preliminary view on the complaint, which stated that the University's position on anonymisation was likely to be upheld. Among other points, the complainant replied by raising the possibility that the material supplied by the University to the Commissioner was a modified version of the requested information and not the original form of that information. Insofar as the Commissioner's decision would not therefore be based on a correct understanding of the requested information, he considers that it may be misguided. He also expressed his view that the DPA should not be used to block the discovery of unfair practices. The Commissioner understands the complainant's concerns but has ultimately decided that he has not been provided with sufficient evidence to conclude that a different determination can and should be reached.

Right of appeal

27. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Rachael Cragg
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