

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 August 2018

Public Authority: SOAS University of London (School of Oriental & African Studies)

Address: Thornhaugh Street
Russell Square
London
WC1H 0XG

Decision (including any steps ordered)

1. The complainant requested information from SOAS University of London (School of Oriental & African Studies) about scholarship awards. SOAS provided the information but redacted part of the contents of four specific emails.
2. The Commissioner's decision is that SOAS correctly made the redactions under section 40(2) of the FOIA because the information comprises the personal data of a third party.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 3 October 2017, the complainant wrote to SOAS to request information of the following description:

"The following question is about applications for the 2017-'18 Alphawood Scholarships.

Please provide electronic or paper copies of all emails received or sent from 1 through 31 March 2017 by the below-listed staff members that refer to the review process for applications, the criteria for evaluation of applications, or the decisions on scholarship awards. Any mention or discussion of the 21 February scholarship awarding meeting or of the minutes to that meeting should also be included. I assume that any names of specific candidates mentioned in emails will be blacked out to ensure protection of personal data. Please include copies of all email attachments, including any files attached via Google Docs and other filesharing services."

5. The complainant provided the names of nine members of academic staff whose emails on the relevant topic she wished to be provided with.
6. On 30 October 2017, SOAS responded and provided some information falling within the scope of the request. It explained that it had redacted third party personal data from the emails under section 40(2) (personal information) of the FOIA.
7. On 10 November 2017, the complainant wrote again to SOAS querying some of the redactions that had been made. She also enquired about a specific document.
8. On 13 November 2017, SOAS replied to her queries. It provided an explanation regarding the document, and disclosed the name of one of the email correspondents which it had previously redacted. However, it upheld its position that parts of certain emails should be withheld under section 40(2) of the FOIA.
9. In subsequent correspondence, the complainant again asked SOAS to review the redacted sections of the emails. SOAS then provided her with further copies, with some previously redacted information disclosed.
10. On 27 November 2017, the complainant formally asked for an internal review with regard to some of the specific redactions that remained in place. SOAS sent her the outcome of its internal review on 23 January 2018. It upheld its application of the exemption to the redacted portions of the emails.

Scope of the case

11. The complainant contacted the Commissioner on 12 February 2018 to complain about the way her request for information had been handled. The Commissioner notes that her complaint related to the contents of four specific emails and not to any individual email addresses which had been redacted.

12. The following analysis considers whether SOAS correctly redacted the disputed contents of the four specific emails under section 40(2) of the FOIA – third party personal data.
13. The Commissioner has considered the definition of personal data under the Data Protection Act 1998 (DPA) which was the relevant legislation at the time when the request was received and considered by the public authority.

Reasons for decision

Section 40(2) – Third party personal data

14. This exemption provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the DPA.

Is the withheld information personal data?

15. Personal data is defined by the DPA as any information relating to a living and identifiable individual.
16. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus, or impacts on them in any way.
17. In this case, some of the redacted information relates to a staff member. The individual is referred to specifically in three of the redacted portions; that is, the redacted portions of the emails timed at 17:24 on 6 March 2017, 21:08 on 6 March 2017 and at 12:05 on 7 March 2017.
18. The Commissioner has reviewed the withheld information and is satisfied that the individual is identifiable in these three pieces of redacted information.
19. In addition, the Commissioner is of the view that, while the individual is not explicitly named in the redacted portion of the remaining email, timed at 08:37 on 7 March 2017, he or she is potentially identifiable from that information in the context of the email conversation.
20. The Commissioner is satisfied that the withheld information, which includes opinions being expressed about the individual, relates to a living individual who is identifiable within the definition of personal data

at section 40(2) of the FOIA, and therefore comprises his or her personal data.

Would disclosure breach the Data Protection Principles?

21. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
22. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual(s), the potential consequences of the disclosure and whether there is a wider legitimate interest in the disclosure of the information in question.

Reasonable expectations

23. Whether an individual might reasonably expect to have their personal data released depends on a number of factors. These include whether the information relates to an employee in their professional role or to them as individuals, the individual's seniority or whether they are in a public facing role.
24. In this case, SOAS accepts that the information relates to an aspect of the individual's public life, since the sender and recipient of the emails are colleagues of the individual and would not otherwise be referring to him or her.
25. SOAS has explained that it is not clear whether the individual was aware of the opinions that were expressed about him or her in the emails, and therefore could not have any reasonable expectation that the information would be disclosed to the public at large.
26. The Commissioner agrees that the individual would have no reasonable expectation that information of the type that has been withheld would be disclosed.

Consequences of disclosure/damage and distress

27. In the Commissioner's guidance on dealing with requests for information about public authority employees¹, it states that disclosure is unlikely to

¹ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

be fair if it would have unjustified adverse effects on the employees concerned. However, although employees (or former employees) may regard the disclosure of personal information about them as an intrusion into their privacy, this may not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life. If an authority wishes to claim that disclosure would be unfair because of the adverse consequences on the employees concerned, it must be able to put forward some justification for this claim.

28. In this case, SOAS's view is that there is a likelihood of "*shock and distress*" to the individual, as well as harm to the individual's professional life, if it were to disclose the information. It has explained that the opinions being expressed are apparently speculative and there is no indication whether the individual is aware of the nature, nor even existence, of the opinions.
29. SOAS has given further reasoning closely related to the content of the withheld information that cannot be included here due to what it reveals about the content of that information. Based on the reasoning in the previous paragraph and that given in the representations made by SOAS to the Commissioner, her view is that SOAS has shown justification for its view that there may be adverse consequences to disclosure.
30. She accepts that disclosure would potentially be an invasion of the individual's privacy and could be distressing for him or her.

Balancing the rights and freedoms of the individuals with the legitimate interests in disclosure

31. In cases where complying with an information request would involve disclosing personal data, the Commissioner will always be mindful of the importance of protecting the privacy of individuals. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a compelling interest in disclosure which would make it fair to do so.
32. The Commissioner has considered whether there is any wider legitimate interest in the disclosure of the information in question here.
33. She notes that the original request related to a matter of some interest to the wider public, since it asked for information about "*the review process for applications, the criteria for evaluation of applications, or the decisions on scholarship awards*" with regard to the Alphawood Scholarship programme at SOAS, and notes that the emails which have been redacted do fall partly within the scope of that request. However, she is satisfied that the redacted portions themselves do not relate to this issue.

34. The Commissioner is also satisfied, in any event, that while the redacted information relates loosely to an individual carrying out public duties, and to SOAS's practices in dealing with employees, it is sufficiently speculative and unspecific that it cannot be said to be of wider legitimate interest.
35. The Commissioner is satisfied that, on balance, the legitimate public interest would not outweigh the interests of the individual staff member and that it would not be fair to disclose the requested information in this case.
36. The Commissioner has therefore determined that the withheld information is personal data and that disclosure would breach the first data protection principle as it would be unfair to the individual concerned. The Commissioner therefore finds that the exemption provided by section 40(2) is engaged and that SOAS was not obliged to disclose the redacted information.

Right of appeal

37. 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

38. 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.
39. 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

**Ben Tomes
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