

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 September 2019

Public Authority: The Governing Council of the University of Northampton

Address: University Drive
Northampton
NN1 5PH

Decision (including any steps ordered)

1. The complainant has requested information from the University of Northampton ("the university") regarding whether a particular qualification had been gained by a named individual. The information was withheld by the university under section 40(2)(third party personal data).
2. The Commissioner's decision is that the university has correctly withheld the information under section 40(2) and requires no further steps to be taken.

Request and response

3. On 16 December 2018 the complainant made a request for information under the FOIA which cannot be reproduced here due to the third party personal information it contains. It is therefore contained in a confidential annex. The request is for the university to verify whether or not the named individual holds a specific degree from the public authority.
4. The university responded on 16 January 2019 and stated that any records relating to a specific person are covered by section 40 of the FOIA.
5. The complainant asked for a review on 17 January 2019 and the university provided an internal review on 8 February 2019 in which it maintained its original position.

Scope of the case

6. The complainant contacted the Commissioner on 4 April 2019 to complain about the way his request for information had been handled, stating that the public interest in releasing this information outweighed any private interest the individual had.
7. The Commissioner considers therefore that the scope of this case is whether the university is entitled to withhold the requested information under section 40(2) of the FOIA.

Reasons for decision

Section 40(2) – third party personal data

8. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
9. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').

10. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
11. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

12. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

13. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
14. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
15. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
16. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information concerns a named individual and their qualifications. This information both relates to and identifies the individual concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
17. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
18. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

19. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

20. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
21. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

22. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that *"processing shall be lawful only if and to the extent that at least one of the"* lawful bases for processing listed in the Article applies.

23. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"².

24. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;

² Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
25. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

26. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.
27. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
28. The complainant has identified a legitimate interest in having had a personal interaction involving the named individual in the latter's professional capacity. Having discovered that the named individual might not possess the qualifications he claimed to have, the complainant has tried to ascertain the facts and make the wider public aware. The complainant argues that where an individual is purporting to hold certain qualifications and is offering their services on this basis they need to be competent and trustworthy. It is in the public interest to uncover any such deception.

Is disclosure necessary?

29. 'Necessary' means more than desirable but less than indispensable or of absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
30. The university would wish to be able to expose any potentially fraudulent claims regarding qualifications it had awarded but, whilst it has sympathy with anyone wanting to expose any deception, it is not willing to highlight individuals because to do so would infringe the rights

and fundamental freedoms of the individual concerned. The university does not consider it to be lawful to release into the public domain qualification details where an individual is singled out as this would not be in the university's legitimate interests. The university argues that it would set a dangerous precedent and be likely to result in many similar requests. Students expect the university to keep their qualification details confidential and to disclose the requested information would be furthering what the university believes to be a personal feud.

31. It is the Commissioner's view that the complainant has a legitimate aim as he contends that it is in the public interest to expose what he considers to be the peddling of fictitious attainments online. The complainant has provided media links that seek to expose what the complainant believes to be the named individual's authenticity and he has suggested that the individual concerned has put details in the public and private sphere and ought not to be protected for that reason.
32. However, the Commissioner does not consider that this information needs to be disclosed in order to meet the complainant's and, by extension, the public's legitimate interests. She has noted that there is no requirement for the named individual to hold such a qualification in order to offer the services outlined by the complainant. If a legal qualification is necessary, then the complainant is able to check with the appropriate professional body. Any organisation that employs an individual should carry out due diligence checks and this preserves the integrity and confidentiality of the process, rather than an individual being subject to such public scrutiny or the possible disclosure of inappropriate personal information. The Commissioner's view is that having personal information about an individual's qualifications disclosed in a public forum is not the least intrusive means of achieving the legitimate aim in this instance.
33. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, she has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).
34. The Commissioner has therefore decided that the university was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

Right of appeal

35. 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

36. 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.
37. 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

Pamela Clements
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SK9 5AF